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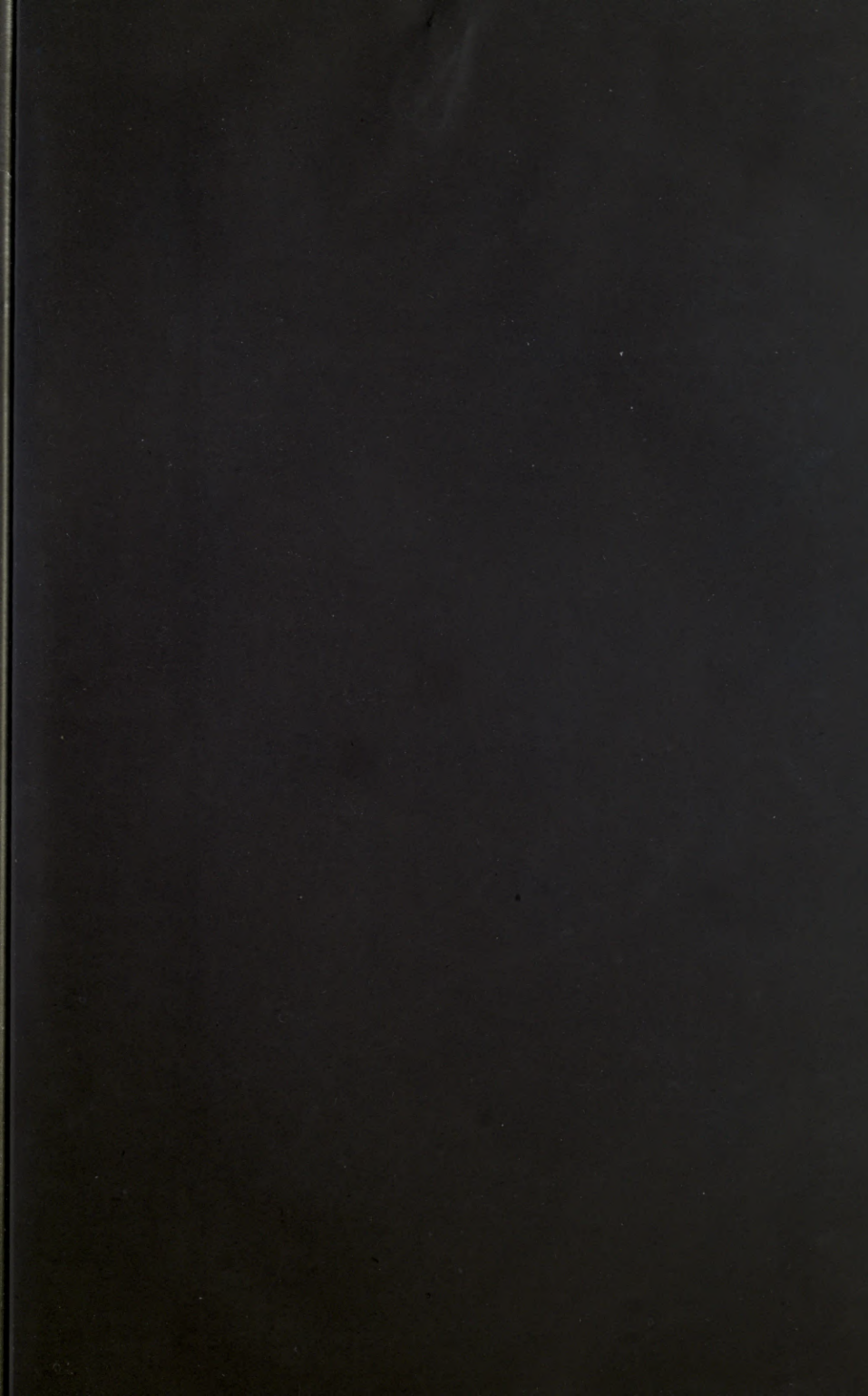
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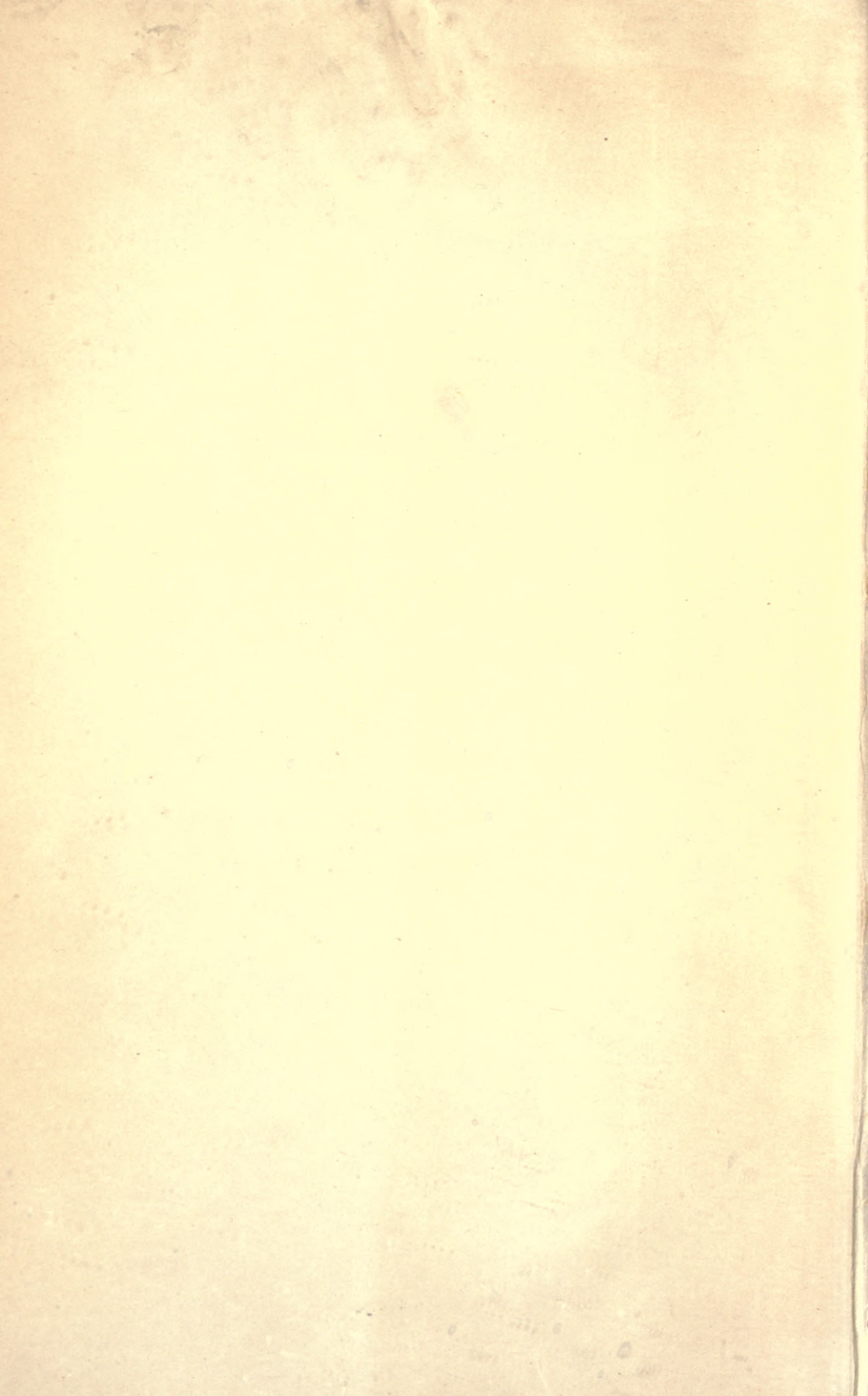




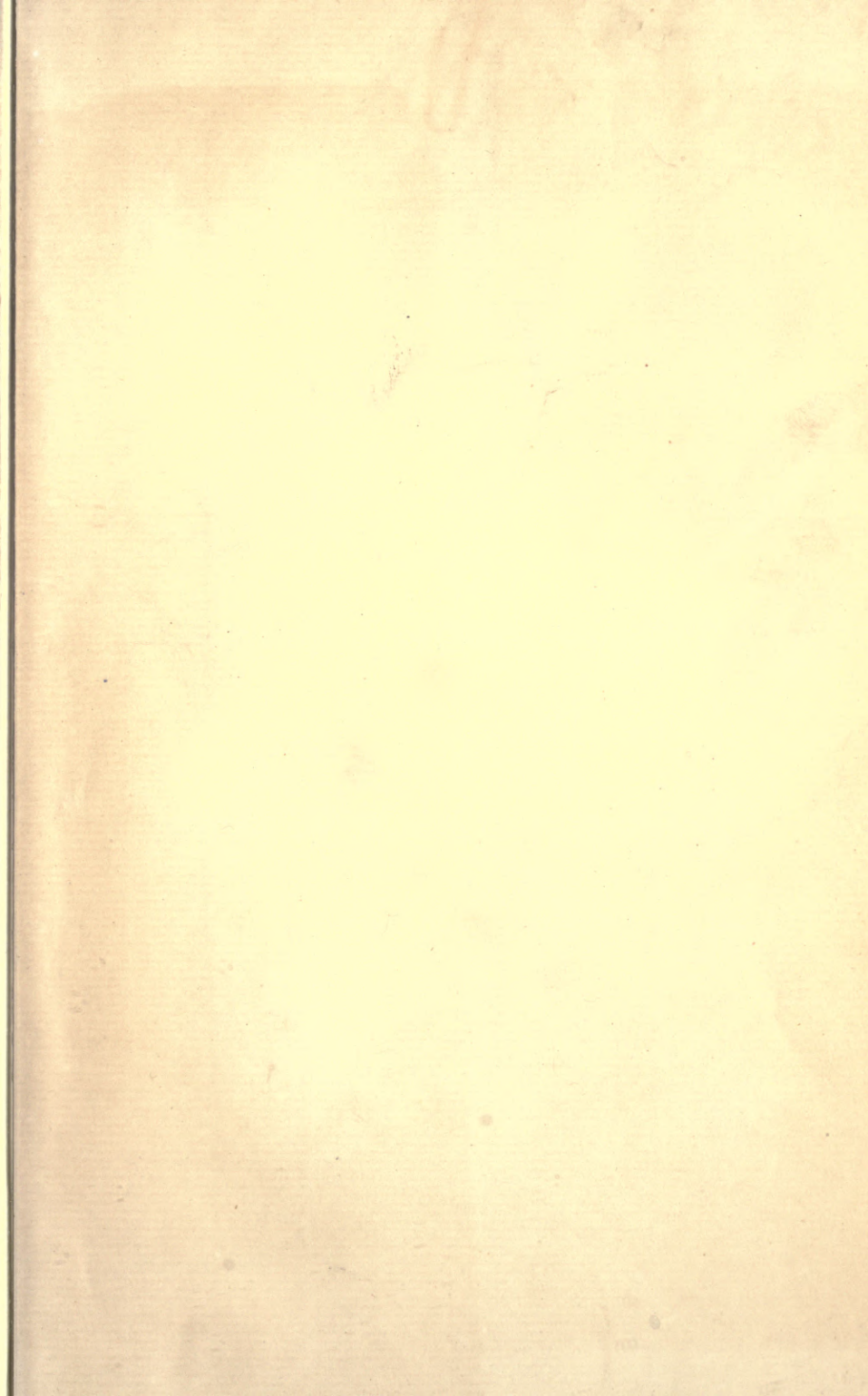
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STATUTES OF THE SCOTTISH CHURCH

OCTOBER 1907





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# STATUTES OF THE SCOTTISH CHURCH

1225-1559

Being a Translation of  
CONCILIA SCOTIAE: ECCLESIAE SCOTI-  
CANAE STATUTA TAM PROVINCIALIA  
QUAM SYNODALIA QUAE SUPERSUNT

With Introduction and Notes by  
DAVID PATRICK, LL.D.



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## INTRODUCTION

IN 1225 a papal bull permitted and commanded the bishops and clergy of the Scottish Church to meet in council under immediate apostolic authority, but without the presence of a papal legate, though they had as yet no metropolitan to summon them or preside over them. And the first meeting of what was practically a national council of a national church is a notable event in the history of the country, and marks a stage in the most sweeping revolution Scotland was to know. The radical reformation in church and state begun under Malcolm Canmore and St. Margaret was completed in its main outlines under their sons, and by the end of the twelfth century had transformed the schismatic *Ecclesia Scoticana* of the eleventh century, the isolated church of Celtic Scotia beyond the Forth, into the all but fully equipped Church of Scotland, to which as to an indisputable branch of the Church Catholic the bull of Pope Honorius III. was addressed.

The bull proclaimed *urbi et orbi* that a new nation had come into being in North Britain, and that the church which had been established there was henceforward to rank as substantially a distinct province of Catholic christendom. Of this new nation the kernel was, not any Celtic tribe or tribes, but the English-speaking lowlanders, ruled by an Anglo-Norman king and led by Anglo-Norman barons. The lowlanders were in no sense in communion with the Celtic church of Scotia, nor could they accordingly reform it from within: they maintained their own church, for many



centuries an integral part of the church of Northumbria, uncontaminated by the Celtic peculiarities they abhorred, and imposed it by force on the Celts. The church of the men of Lothian became the church of the nation, everywhere extruding and superseding the Celtic church. The new establishment brought with it the Roman canon law and the bishops' courts in which that law was enforced; and when the ecclesiastical constitution was developed by the creation of a provincial or national church council, the canon law of Rome was expanded and applied exactly on the English model by this council in its *Statuta*. And by making its own the spirit and substance, in many cases the very words, of enactments passed at national, provincial, and diocesan synods of the English church, the new church in North Britain proved to demonstration that, as in apostolic succession, doctrines, institutions, and rites, so also in the details of discipline and the working of its ecclesiastical courts, it was no offshoot or daughter of the old separatist Celtic church, but a true, though locally distinct and independent, branch of the Anglo-Catholic church.

The right to call its own councils, conceded by Rome and tacitly admitted by England, was an important recognition of the independence alike of church and nation, a modest triumph of the discreet but persistent Scottish nationalism maintained at Rome by a succession of Scottish kings, barons, and bishops in the teeth of equally persistent English opposition. This cannot be called the accepted view: it is not set forth in Dr. Robertson's learned preface; and recent authorities who quote with due respect the *Statuta* and Dr. Robertson's comments thereon pass over the period without even alluding to the institutional significance of the council or its work. Hence it is necessary here briefly to survey some aspects and episodes of that establishment of the Catholic kirk in Scotland, of which the provincial council was for more than three centuries the keystone.

We first hear of the *Ecclesia Scoticana* under that name late in the ninth century, and then it was apparently the ecclesiastical factor in the Celtic reaction and renaissance that placed Kenneth Macalpin's dynasty on the throne of the Pictish kingdom. The church council of Châlons in 813 had given final effect to St. Boniface's zeal against the Scotie or Irish missionaries by pronouncing their orders utterly invalid and tainted with simony; a great English council at Chelsea in 816 had followed suit, denouncing Scotie orders, and excluding clerics ordained by Scoti from ministering in any of the sacraments. The Pictish church, which for more than a hundred years had been under Anglican influence, also refused to recognise Scotie masses, and, according to the Pictish chronicle, was therefore justly punished by the victory of Kenneth, who in Pictland took up the challenge of Christendom, and in opposition to southern influences drew closer the old bond of connection with the Scotie church in Ireland. In 878 one of Kenneth's successors, Girg or Gregory, gave the *Ecclesia Scoticana* liberty from servitude 'according to the use and wont of the Picts,' a liberty Kenneth had obviously failed completely to secure for it. And Kenneth and Girg significantly showed the animus of this *Ecclesia Scoticana* against the *Ecclesia Anglicana* by burning or plundering, the one Melrose, the other Lindisfarne—the two most sacred shrines in Northumbria in the days of the old Scotie mission from Iona, which had become odious in Scotie eyes by joining in the Roman defection of Whitby in 664.

In 908 the Scotican church of Kenneth and Girg was united on a footing of equality or something more with the national church of the kingdom of Pictavia or Alba; and a quarter of a century after this union, Scotia or Scotland—of old the name for Ireland only, a name the Irish now most opportunely gave up, possibly as exposing them to obloquy abroad—becomes the accepted and universal designation for the kingdom of the Picts between Forth and Spey: the church of the

Scoti is now accordingly the national church; and the Epscop Alban at St. Andrews is henceforth the Episcopus Scotorum.

When St. Margaret made Scotland her adopted country, and began the work of converting the Scotie clergy to Scriptural and Catholic views and observances, it was with the church of this Scotia alone that she had to do. Moravia (the great northern province of which modern Morayshire is but a fragment), Caithness, Argyll were hardly within her husband's authority: the Western Isles, Orkney and Shetland were wholly without it. Strathclyde and Galloway, though under the kings of Scotia, were no part of their hereditary kingdom, and their churches, though churches of Celtic races and of Celtic rites, had no connection with that of Scotia; the ancient sees of Whithorn and Glasgow, both daughters of British missions from the south, had always looked southward not northward for spiritual guidance.

Lothian, which had come under the power of the kings of Scotia early in the century, was in all respects more completely alien. The Anglic inhabitants had bargained that they were to be allowed to retain their own laws and customs; of their speech there never had been question; and their church was an integral part of the church of Northumbria, of the Roman obedience. St. Cuthbert, the saint of Northumbria and of Lothian, had with his dying breath charged his disciples to have no dealings with the schismatic Scoti. For four hundred years and more English-speaking Christians had regarded the Celtic churches as schismatic or worse; and the eleventh century Scoti, who had assumed the name and claimed the inheritance of the schismatics of St. Cuthbert's day, were known to be at least equally schismatical.

It is too lightly assumed that the political cession of Lothian to the kings of Scotia involved *ipso facto* the transference of part of the holy Catholic Church to an alien and corrupt schism, and that without protest from a series of popes as energetic as were Leo ix. and Gregory vii. In the



middle ages it happened again and again that the political connection was changed, while the old church dependence was maintained intact for hundreds of years, even though the nations were bitterly hostile. The Hebrides became Scottish territory in 1266, and the Bishops of Sodor or the Isles were entitled to sit, and did sit, in the Scottish parliaments. But the diocese remained ecclesiastically in the province of Trondhjem till 1472, its bishops being consecrated by the Norwegian archbishop and bishops.<sup>1</sup> So for hundreds of years after Galloway had become definitively Scottish (till 1472 also) the see remained as indubitably within the metropolitan province of York and subject to its archbishops.<sup>2</sup> So from the time of King John till the Reformation, the Channel Islands belonged indisputably to England, while ecclesiastically they were subject to the French see of Coutances. There is no evidence that the church in Lothian was detached from the see of Durham in the eleventh century, or made subject to the see of St. Andrews. The church in Lothian may have been, must have been, sadly depressed during the Danish invasions and occupations of southern Northumbria; but there is no reason to believe that then or later it was in any respect conformed to the Celtic church, in doctrine or in usages. On the contrary there is much evidence to show that well into the twelfth century Durham was the spiritual metropolis of Lothian, and that so far from the Christians of Lothian having ever been under the authority of a Celtic bishop, it was rather the church in Lothian that became the corner-stone of the new reformed Catholic Church, which under David and his successors became the one and indivisible church of the Scottish kings' whole dominions, and as such was a powerful—perhaps the most powerful—instrument in overcoming old historical feuds, and welding the discordant racial elements of what we know as Scotland into one fairly homogeneous kingdom of European and Catholic civilisation, and of specifically Teutonic type.

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<sup>1</sup> See note on pp. 137, 138.

<sup>2</sup> See note on p. 294.

From the beginning of the eleventh century the history of Scotland is essentially that of the first great English colony ; telling how Lothian in the south-east corner, thoroughly Anglian in blood, language, and customs, became the predominant partner in a loosely compacted kingdom of Celtic speech and polity. The Anglians spread northward and westward ; their influence spread faster and further ; their tongue, their customs, and their laws became the national tongue, customs, and laws of a heretofore purely Celtic state ; and, as Cosmo Innes has said, ‘ in all Southern Scotland, perhaps I may say all south of Spey, we find hardly any traces remaining of a peculiar Scotch or Celtic law distinguishable from the laws of our Teutonic forefathers.’ In Scotland, the English pale annexed and assimilated the Celtic ‘ hinterland.’

The history of the church presents a direct parallel ; save that here Anglian counts for more and Celtic for less. Centuries earlier Anglian influences had begun to mould the polity of the Pictish church. And after Margaret’s time, not only is there no trace of any peculiar Celtic law or tradition regarded as binding on the church in North Britain ; it seems as if Margaret and her successors, while nominally reverencing the ancient Celtic saints and shrines, had made it matter of conscience to disallow and stamp out every Celtic peculiarity even from the church in Scotia proper.

The daughter of a half-English, half-Danish, lifelong exile in Hungary, Margaret was on her mother’s side a princess of the Holy Roman Empire ; and the court of her grand-uncle, the Emperor Henry III., had in her time become a focus of the great Cluniac reform that was everywhere giving new life to the Catholic church, and mightily forwarding the monastic conception of piety. To Margaret, trained for the religious life according to the most advanced German ideals, the English church must have seemed as backward and corrupt as it did to all Continentals. Face to face with her new subjects, the Scotie clergy, she evidently did not regard herself as deal-

ing with a branch of the Catholic church, and unhesitatingly defied their traditions as unscriptural and schismatic: one 'distinctive principle' at least clearly enshrined what was not so much unorthodoxy as sheer heathenism. Thus the Anglican church, like the Roman church, had for centuries regarded the observance of the Lord's Day as absolutely binding on Christians; the Scotie clergy did not. Worse still: St. Gregory had branded the marriage of sons with their fathers' widows, their own stepmothers, as utterly unchristian, abominably incestuous, and a challenge to the dreadful judgment of God; the Scoti actually defended it. Bede the Northumbrian treated such unhallowed unions as a specific mark of open adhesion to heathenism; and from the way it is referred to by Margaret's biographer—if not Turgot then some other monk of Durham—we may gauge how the Anglian Christians of Lothian would regard this Scotie abomination. Lothian, we may be sure, had neither part nor lot with those who maintained such heathen horrors—all the more that they concerned matters of discipline and custom rather than of abstruse doctrine. And it is evident that the English-speaking clergy of Lothian were not in any way represented at the frequent councils (*crebra concilia*) Margaret held for arguing down the Scoti, where the queen had to confute Gaelic-speaking Celts ignorant of English, and at least so unfamiliar with Latin as to be quite unable to follow a theological argument in that tongue. Margaret, a German-trained theologian, had to translate her thoughts from Latin into such English as she could muster, and to rely on the skill of her husband—son of an English mother—to interpret from her English into the Gaelic of the Scotie divines, the only language they could comprehend. And she frankly overbore their convictions in a way the most Christian emperors of the East and West did not feel themselves free to do with any church in Christendom in council assembled. She had as little regard for the un-



broken and universal traditions of the native church of Scotia as Augustine showed for the divisive usages of the British Christians.

Even after Fothadh, the Scotie bishop, had allowed himself, though backed apparently by the consensus of the whole Scotie church, to be, quite uncanonically, overborne by his queen, a learned but foreign lady, we cannot wonder that Margaret took care pointedly to exempt herself from his religious authority by choosing the prior of Durham—a *persona grata* to her subjects in Lothian—as her spiritual director, and Lanfranc of Canterbury as her spiritual father. Lanfranc was at this moment busy conforming the church in England to the very standard Margaret had herself been trained to regard as the only norm of Catholic orthodoxy and order.

At her request he sent her a duly qualified chaplain, adding two brethren as assistants, inasmuch as one alone would be unable to perform all the duties in the way of the service of God and the queen's service that would be needed. Obviously the English priest and his assistants were sent to perform the many masses daily in which Margaret delighted, and save her from the 'barbarous rites' which shocked her in the Scotie mass. With her English chaplains and her Northumbrian spiritual director, Margaret was a member of the Catholic, not of the Scotie church. She was as surely the subverter of the old Scotie church as she was the patron of the Catholic church; and the 'frequent councils' we hear of in her reign, far from being designed to put on record and maintain the sacred lore or traditions of the Scotie church and churchmen, were held for the very purpose of suppressing all that did not conform to the Catholic model of the church in England and on the Continent.

Turgot, or Thurgod, was not merely one of the most eminent churchmen in northern England, but, as prior of Durham, is found towards the end of the century exercising jurisdiction in

the monasteries of both Melrose and of Jedburgh.<sup>1</sup> He was also therefore the foremost churchman of Lothian; and the same reason that dictated Margaret's choice of him as spiritual director led doubtless to his being chosen and consecrated (1109) as the first Catholic bishop of St. Andrews, sixteen years after the last Celtic bishop had been gathered to his fathers—an *interregnum* which proclaimed, and was probably meant to proclaim, that a new succession was to begin.

But Turgot, though heretofore distinguished in service on both sides of the Tweed, failed miserably as bishop of the Scoti at St. Andrews. Unable from the first to exercise his office worthily, he was preparing to resign it when 'from oppression of spirits' he, in 1115, fell into a melancholy and so died. Eadmer of Canterbury, elected to be his successor, resigned before consecration; not so much, if we may judge from the very remarkable letter to him from his friend Nicholas of Worcester,<sup>2</sup> because of the technical difficulty about whether York or Canterbury was to consecrate, as on account of the 'unmitigated savagery' (*indomita barbaries*) of the Scoti, clergy and people, and his hopelessness of succeeding where Turgot had so dismally failed in bringing them 'to accept sound doctrine and ecclesiastical discipline' (*ad sanam doctrinam ecclesiasticamque disciplinam suscipiendam*).

How sharply the men of Lothian and Teviotdale were as yet distinguished from the Scoti is plain from the contemporary chroniclers who describe the Battle of the Standard in 1138, Ailred of Rievaulx and Richard of Hexham. Both are horrified at the association of Christian Normans, Angli of Lothian, and Tividalenses with such appalling savages as the Scoti and Galweienses, who, worse than the heathen, gloried in the most revolting butcheries of children, and took peculiar delight in defiling altars by heaping them with bleeding human heads, in mutilating crucifixes and sacred emblems.

<sup>1</sup> Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. ii. part I. p. 161.

<sup>2</sup> *Ibid.*, pp. 202-204.

The reigns of Malcolm's sons Duncan and Edgar are remarkable for grants to Durham of important and numerous monasteries and churches, showing that for the men of Lothian, if not for the kings themselves, St. Cuthbert's shrine was the most sacred religious centre. Duncan made the grants probably as a bait to secure the support of Lothian in his desperate struggle for the crown; Edgar because he had won his kingdom by favour of St. Cuthbert and fighting under his banner—not to speak of the support of William Rufus and the assistance of English troops. Edgar indeed in every way identified himself with Lothian, and made Edinburgh his capital: in his mother's little Chapel of the Rock the barbarous rites of the Scots were unknown; and St. Cuthbert's kirk beneath the shadow of the Castle had from its foundation and by its very name and dedication been a standing testimony for the Catholic faith and against the schismatic Scots. In more senses than one it is true that to St. Cuthbert St. Margaret's sons, Edgar, Alexander, and David, owed their succession to their father's crown.

It is extremely significant that of the first fifteen charters in the published national manuscripts of Scotland,<sup>1</sup> all but one are occupied with linking monasteries and churches in Lothian indissolubly to Durham, St. Andrews being wholly ignored. Alexander and David could the more willingly sanction or confirm these grants to St. Cuthbert, inasmuch as they were firmly resolved to add to their dominions all Northumbria to the Tees. On this David and William staked their kingdom; and had this ambition of a succession of Scottish kings been attained, Durham, and not St. Andrews, would doubtless have been the spiritual metropolis of the northern realm.

Robert, first of the new succession to exercise real authority as Bishop of St. Andrews, came also from old Northumbria. In his time we have the earliest evidence that Lothian was

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<sup>1</sup> *National MSS. of Scotland*, vol. i.



regarded as within the jurisdiction of St. Andrews. And even he had, before his consecration, to allay anxiety in Lothian, lest as bishop he should withdraw from Durham the only revenues we know the Celtic bishops to have drawn from any part of Lothian.<sup>1</sup>

But now that the Celtic church had been conformed to the Anglican model, and a sound Anglican sat on the episcopal throne of St. Andrews, the people of Lothian needed no longer to have an indefeasible objection to the ecclesiastical jurisdiction of St. Andrews. From David's time Lothian was no longer an outlying province, but an integral and dominant part of the kingdom. The systematic feudalising of Scotland was made vastly easier through Lothian's being within the king's dominions; the Anglicising and Catholicising of the northern church must have been greatly simplified by the Anglican traditions of the church in the southern province in such close association with the see of Durham, now under a Norman bishop and prior. And from the time when Catholic bishops ruled in St. Andrews and Lothian was becoming the principal province of the kingdom, we may account Lothian as an arch-deaconry of the now Catholic church of Scotia.

Since the conquest of Kyle by the Northumbrians in 750, Strathclyde, or the western lowlands, had been largely Anglicised: the dedications of churches in Ayrshire and Galloway to St. Cuthbert and St. Oswald are believed to date from the time when Candida Casa was an Anglian see, actually occupied by Northumbrian bishops (730-803); and though the 'usages of the Bretts' in Strathclyde were only abolished in 1305, and though Gaelic was spoken in Galloway and south Ayrshire until the eighteenth century, the ecclesiastical influences in Scottish Cumbria were essentially Anglo-Norman, at least from the time that David, as prince (1107-1124), restored the see of Glasgow.

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<sup>1</sup> Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. ii. part i. pp. 213, 214.

In the reign of David Celtic Scotia came to an end, and feudal Scotland took its place. Celtic institutions made way for a thoroughly Anglo-Norman polity and the Anglo-Catholic church. It was not that the Celtic traditions were modified by Anglo-Norman ideas: in church even more than in state the new polity completely superseded the old; an almost completely equipped church was substituted for the native chaotic order of things; and for the carrying out of this civil and ecclesiastical revolution David relied on the Englishmen and Anglo-Normans whom he brought into the country in large numbers.

More than half-English by blood, and wholly English by training and sympathy, David was treated by the Anglo-Norman barons as one of themselves; and it was to his English and Anglo-Norman subjects and allies that he owed his crown, his Celtic subjects showing in two or more fierce campaigns that they regarded him and his house as southern aliens. To the English and Anglo-Normans he looked to help him in his innumerable schemes for taming the barbarity of the Celts; and for the new church of Scotland with its Anglo-Catholic institutions and rites, its Roman canon law, its territorial dioceses, its cathedral constitutions copied from English ones, its Augustinian and Cistercian monasteries, it was inevitable that David should rely exclusively on representatives of the church he loved and honoured, on men trained in every department of Anglo-Catholic church life. Indeed, we do not know that there was as yet in Scotland any provision for the training of the new clergy, the Culdee tradition being radically inconsistent with Anglo-Norman ideals. Hence the monasteries were but colonies from English houses, abbots and monks being transplanted in whole communities from the south; even in the purely Celtic areas only in two or three cases do the first bishops bear Celtic names, their successors being invariably southrons. All the more influential clergy of every kind and very many of the humbler clerics were of English speech and birth and

training—a large proportion of them from Lothian and the northern English counties.

With bishops came episcopal courts and canon law. A mark of the English church, as reformed by William and Lanfranc, was the sharp distinction, unknown to the old English church, of the ecclesiastical from the civil administration. The Witenagemot, in which, of course, the bishops sat, transacted before the Conquest much of the business proper to church councils, while archdeacon and dean sat in the Court of the Hundred. William the Norman decreed that this should cease, that synods should meet frequently, and that spiritual causes should be tried by the bishop in his own court, according to the canons; those who disregarded the bishop's summons and remained contumacious after excommunication were to be brought to a better mind by the sheriff or the king. The complete hierarchy of ecclesiastical courts was a note of the Anglo-Norman church, and in this, too, Scotland was bound to follow the example. The first regular church council we hear of in Scotland took place the year after David came to the crown—the legatine council held at Roxburgh in 1125; and to his reign also we must trace the establishment of bishops' courts, which in Scotland were destined to usurp so much of the administration of justice which in England was carefully reserved for the king's courts.

It was apparently David's ambition to produce in Scotland as near as might be a smaller replica of the church as by law established in England, wholly disregarding local and traditional peculiarities as uncanonical. But with all his admiration and reverence for England and the English church, and his flattering imitation of English ways, nothing was further from his mind than to make his crown in any way dependent on that of England, or have his reconstituted Scottish kirk subordinate to the English church or its archbishops. The more completely he organised his kingdom and his church on the English model, the more entirely qualified

were they for holding their own as the crown and kirk of an independent kingdom.

It is worth insisting on this point, for it has often been assumed as inevitable that the imitation or copying of the English polity should imply willingness to subordinate the Scottish to the English crown and church, and thought strange that English-born bishops should maintain against English archbishops the rights of Scottish sees to wholly independent jurisdiction. But even if it be not altogether true that a Catholic bishop has no nation and no politics, and that his church is his country, it is certainly true that the church was then even more than now the most cosmopolitan of institutions, and that a Catholic bishop, native or foreign, might be trusted to maintain the rights of his see against all comers who sought to diminish its dignity. David and his bishops strove to make the Scottish sees as worthy of their title as the English ones. And for this very reason, while they sought to suppress all local Celtic peculiarities, they would naturally make the most of any claims their sees and churches might have to antiquity, and magnify the merits of the Celtic saints and missionaries who founded them.

But the Anglo-Catholic church as established by David in Scotland, while it took the place of the Celtic church, and might be called its successor, was as little derived from it as was the English church from the old British church. The mediæval kirk of Scotland stood related to the Celtic church of Columba very much as the English church of St. Augustine and Dunstan and Lanfranc did to the church of King Lucius, St. Alban the Martyr, and the ancient Britons. It was the feud between the kingdom of Scotland and the kingdom of England that led the champions of the mediæval church of Scotland to identify themselves with the church of Columba rather than with that of Augustine of Canterbury and Egbert of York. From the councils to which we owe the Statutes, one note of the older Celtic councils is



emphatically awaiting. In the palmy days of Scotie Christianity, when the chief controversy that troubled the Isle of Saints concerned the form of the tonsure and the date of Easter, we know from Mac Firbis's Annals that 'the clergy of Erin held many synods, and they used to come to these synods with weapons, so that pitched battles used to be fought between them, and many used to be slain. . . . They continued thus for a long period, and even to the time of Adamnan.' The more anomalous features of Scotie Christianity seem indeed never to have been introduced into Northumbria. Even during the Scotie mission we have no record of the Christian women and Christian clergy being compelled to fight shoulder to shoulder with the warriors in all hostings, as was the case in the really Scotie area. And though Aidan was an abbot, he was also a bishop, and from the first he seems to have functioned as a territorial bishop with full episcopal powers.

As in Scotland, so in Ireland and in Wales, it was the twelfth century that witnessed the most pronounced and rapid approximation of the other British churches to the English church and its polity, government, law, doctrine, ritual, and architecture. In 1188, the very year the Pope finally exempted the Scottish bishoprics from subordination to Canterbury or York, the Welsh church, which (in the person of Giraldus Cambrensis) had hoped against hope to be constituted a metropolitan province, was swallowed up by the church of England and the province of Canterbury. Ireland, which had actually four metropolitans from about the middle of the century, was nominally conformed to the English church in 1172: though it is plain that a large part of the Irish church, the really native part of it, remained on many points true till the Reformation to some of the old Celtic divisive courses. Indeed, it has been said by Dr. Stokes that from 1172 till 1540 there were two churches in Ireland, one Anglo-Norman, the other Celtic, bound together by the one tie of

the papal supremacy. The fact that this was so, whereas in Scotland approximate conformity was gradually established, helps to explain the sharp contrast between the later ecclesiastical development in Ireland and in Scotland.

The *Ecclesia Scottica* or *Scoticana* after David's reign, as when we read of it, say, in Hoveden or Fordun in connection with the Treaty of Northampton in 1176, was accordingly a church which had been diligently and effectively purged of every trace of Scotie leaven, whether of the ancient Scoto-Columban church of the Dalriads or of the Scoto-Celtic renaissance under Kenneth and his dynasty in Alba; of all that was Scotie in the sense of the seventh, ninth, or eleventh centuries, save that it was the church of the dominions of the monarch who was called King of Scots. Since the northern kingdom had in the tenth century adopted the name of Scotia or Scotland, the etymological fallacy had been at work, and had utterly distorted the history of North Britain. It became a point of honour to trace the national history backwards to and through the Dalriad Scots. Both in church and state the influence of the settlers from Ireland was prodigiously exaggerated; and after the great national struggle for independence began in the thirteenth century patriotic piety fabricated a cunningly devised system of pure fable which, till Skene completed the work Father Innes began, was still accepted by Scotsmen as their national history. Scotland, most ancient and most glorious of monarchies, naturally and necessarily drew its origin from the Irish-Scotic kingdom, not from Picts, Britons, or Angles, who were disdainfully treated as aliens. And obviously the *Ecclesia Scoticana* could have no other foundation than amongst these same Scots. The weird army of pre-historic, anti-historic kings of Scotia, whose fictitious effigies amaze or amuse visitors to Holyrood, have dissolved into thin and transparent air; but the mists of Scotie fable still fill up many of the hollows and cling round some of the heights of our early church history, and mislead the unwary

by distorting their judgment of distance and direction, at times even obscuring their vision of the solid granite rock of fact.

The haly Catholic kirk of mediæval Scotland had at first no councils of its own, no code of statutes or decrees it could look back to as a source of local canon law. From 1070 onwards Celtic laws and traditions had been systematically suppressed; English rules were everywhere regulative and authoritative. If it was the church in Lothian that grew into the national kirk it is plain that church historians err in looking for its earliest laws, canons, or statutes in the decisions of ancient Pictish, or Columban, or Irish assemblies, more than half tribal and political. The constitution and laws of the kirk of the north grew out of the principles that had entered into the bone and marrow of the church of Northumbria and of England. Not the councils of Tara and Birr, the laws of Adamnan and King Nectan, of Girg and Constantine and Kellach, but the penitentials of Theodore and Egbert, the decisions at Whitby and on the Nidd, the councils of Hertford and Hatfield, of Clovesho and Chelsea, laid the foundations of Scottish church law. Hence when the fathers and brethren of the Scottish kirk assembled under their conservator in 1225, it was, save for political reasons, almost to be expected that they should draw directly, not merely from the Roman canon law, the decretals of popes, and the canons of general councils, but from the enactments of the national and provincial synods of the English church, if not from constitutions drawn up by individual English bishops for the administration of their several dioceses.

One isolated fact helps curiously to show that long ere this English church law was accepted as authoritative even north of the Forth. The library bestowed by Bishop Robert of St. Andrews on the priory of Austin canons there in 1150 is much more likely a collection of his own books (indicated as *omnes libros nostros* in his charter of 1144) than, as has been

universally assumed, the library of the Culdees in the island in Lochleven.<sup>1</sup> The catalogue specifies as last of the books *Excepciones Ecclesiasticarum Regularum*—in all probability the often-cited *Excerptiones Ecgberhti Eburacnesis*, the famous selection of church canons attributed to Egbert of York in the seventh century, but now believed to date, as we have them, from the tenth century. A Yorkshire bishop of St. Andrews, in the twelfth-century, regarded as indispensable for Scottish needs, and as equally binding on his diocese, a collection of canons compiled in Yorkshire by Yorkshiresmen, from various Catholic sources—Roman, African, English, and other, one only being described as Hibernian. If this be so, we have in use in twelfth-century Scotland a compendium of Roman canon law, redacted in England, hundreds of years before Scotland, under French guidance, had begun to look to the Roman civil law as the groundwork of its national jurisprudence. The *Excerptiones Ecgberhti* prepared the way for the *Decretum Gratiani*, as it again is implied in the *Statuta* of the Ecclesia Scoticana.

By the end of the twelfth century, as we have seen, the church of Scotland was organised essentially like that of England: David and his immediate successors had in large measure accomplished for Scotland what the Norman Conquest had achieved for England—had brought it into the main current of the life of Christendom. David had found three bishoprics in Scotland—St. Andrews, Dunkeld, and Moray—and left nine, having added Glasgow, Aberdeen, Ross, Caithness, Brechin, and Dunblane. Orkney and the Isles, as Scandinavian, were subject to Trondhjem;<sup>2</sup> and Galloway, though in the Scottish dominions, was an undisputed suffragan see to York; but the separation of Lismore or Argyll from Dunkeld in 1200 had made the sees of the Scottish church ten in number. By

<sup>1</sup> Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. ii. part 1. pp. 227, 228; cf. pp. 221, 222.

<sup>2</sup> See note on pp. 137, 138.



that time there were a score of great monastic houses in the country, perhaps a larger number of smaller ones. But in one important point Scotland differed from most Christian lands—the crown of the ecclesiastical edifice was wanting; her bishops had no metropolitan, her bishops' courts no provincial ecclesiastical court over them. Irish orders had been denounced at Chelsea in 816 because the Irish church had no metropolitan; but since the middle of the twelfth century Ireland had no less than four archbishops. The anomalous position of the Scottish church in the Christian world was not due to indifference at home, but to the persistent claim of the English church to treat all the Scottish sees as dependent on it, and to the opposition made by the English crown and the archiepiscopal sees of York and Canterbury to the concession of metropolitan dignity or anything that might imply it to the Scottish church.

King David had tried to secure the pallium for St. Andrews, but was defeated at Rome by the influence of York. The attempt was renewed again in vain, under David's grandson, Malcolm the Maiden, in 1159. Until 1176 the Popes had distinctly supported the English contention, but in 1176 Pope Alexander III. disallowed the claim of York until the case was fully tried; and in 1188 Clement III. issued a bull declaring the Scottish church subject only to the Apostolic See. This privilege was confirmed by Pope Celestine in 1192, and by Innocent III. in 1200. But in 1221 King Alexander's request that he might be crowned by a representative of the Holy See was rejected by Innocent III. because of Scotland's dependence on England. A like request in 1233 was to meet with a like answer through the direct opposition of the Archbishop of York and the English king; that is, it was not yet admitted by England that the crown and church of Scotland were really independent of England. The Pope still deferred to the English claim, and Christendom judged by the attitude of the Apostolic See. The nationalist claims

of the church and of the crown had for more than a century gone hand in hand; the somewhat tortuous church policy of the Scottish kings is only to be explained by their zeal for a free church in a free state, the state's freedom being guaranteed by the freedom of the church from extra-territorial control or supervision. And it is manifest that at this juncture particularly any concession to the church that should display to the world that coveted freedom would be equally welcome to the king and to the churchmen.

It was opportune for the further realisation of nationalist aims that a great œcumenical council imposed on the church in Scotland, in common with all the churches of Christendom, a duty it could not fulfil without a more complete organisation—an organisation which only apostolic authority could confer. The Fourth Lateran Council of 1215 insisted on the assembling regularly and statedly of provincial synods of the clergy. Now Scotland had indeed secured exemption from the provinces of York and of Canterbury, but did not constitute a province by itself. As Scotland had no metropolitan, any synod of bishops there without the presence of a papal legate thereto deputed would by the canon law have been an irregular *conventiculum*. Since the reformation of the church on Catholic principles some six or seven legatine councils had been held: the first of which we have any record took place in 1125, exactly a hundred years before the Fourth Lateran Council, and all of them had mainly to do with the claims of the English archbishops over Scotland and the Scottish sees, the settling of local controversies and the preaching of a crusade. In one, that of 1212, the Bishop of St. Andrews presided as legate: two only, those of 1177 and 1201, are said to have passed canons, of which we are told that one disallowed the ordination of priests on Sundays and others regulated Cistercian immunities. But it was not such *pro re nata* or extraordinary assemblies that the Lateran Council had in view.

The Fourth Lateran Council of 1215 was for obvious

reasons the first in which the Scottish church was represented as a national Catholic church. At the time of the eighth œcumenical council, that held at Constantinople in 889, the churches of the Scoti and Picti were still defying each other, and neither of them had a recognised place in the Catholic church. At the first General Council of the Lateran in 1123, the see of St. Andrews had been vacant for some years, the other two bishops (of the kingdom proper) had been uncanonically ordained, and Glasgow (in Strathclyde) was in rebellion against York; at the Second Lateran of 1139 David's reconstitution of the church was as yet quite incomplete; at the Third Lateran of 1179 Scotland was regarded as only a dependency of England.

That there were at least two Scottish clergy in Rome in 1179 is almost certain. But it is incredible that Severinus Binius, canon of Cologne, can be right, when, in the notes in his *Concilia Generalia* (1606), he says, vaguely and without giving any authority, that there came from Scotland to this council *episcopi et abbates complures*. The lists of those who attended this council are notoriously very imperfect: only four English bishops were present. As to Scotland, it is more likely that Albertus, Benedictine abbot of Stade in 1232-1240, is reporting the actual Scottish representation when he says<sup>1</sup> that two Englishmen and two Scots were ordained bishops by Pope Alexander III. at that council. Of the latter 'one came with a horse only, the other on foot with one companion also on foot. And there was there an Irish bishop who told Henry, master of the Schools of Bremen, that he had no other income than three milk cows, for which, when their milk failed, the people of his diocese substituted others.' The poverty of the Scots and Irish was evidently their outstanding feature; and the two priests who had come for consecration were apparently the only Scottish clerics in Rome.

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<sup>1</sup> In his *Chronicon a Conditio Orbe usque ad A.C. 1256*.

Not till 1188, the year before Cœur de Lion sold back to Scotland her national liberties, had Rome decided that the Scottish church was to be no longer treated as part of the English church, but as subject to the Roman see alone. Accordingly at the next œcumenical council of 1215, the twelfth of the General Councils of the church, the kirk of Scotland took care to be well represented.

## II

Just before the middle of the twelfth century Gratian had at Bologna completed his great *Concordia Discordantium Canonum*, thereby providing a comprehensive code of church law which was practically accepted as authoritative, the *Jus Canonicum* being now for the first time systematised or so named. The *Decretum Gratiani* was made a professional study throughout Christendom in the second half of the twelfth century; and churchmen were compelled to note how inadequate church law was in many departments, and how ineffectively it was being carried out. In 1215 Rome took the lead in reorganising and reinvigorating disciplinary rules and methods; and Gratian's work had prepared the church to appreciate and welcome the enactments of the Fourth Lateran Council assembled by Pope Innocent III.

Under Innocent III. from 1198 to 1216 the papal authority reached its greatest height. Innocent was after Gregory VII. the greatest of the Popes, theologian and canonist as well as statesman and spiritual leader. Between 1200 and 1210 he had excommunicated, not without reason, the kings of France and England, and even the emperor himself, and had put both France and England under interdict. But no man recognised more fully that if the world was very evil, the church was not blameless therefor. From St. Bernard's days especially there had not lacked trenchant criticisms of churchmen by great churchmen. The best



friends of the church admitted that the multiplication of heresies and the widening gulf between the people and their spiritual guides was largely due to the simony, luxury, worldliness, and unholy lives of many of the clergy and of the monastic orders. It was to check these evils that in 1213 Innocent summoned a twelfth General Council, to be held, like the last three, at Rome in 'the mother and head of all the churches of the city and of the world,' the cathedral church of St. John in Laterano.

The council, which held in all three sittings, in November 1215, besides commending the Crusade to the support of Christian princes and peoples, and sanctioning the doctrine of transubstantiation, condemned the heresies of Cathari and Waldenses, laid heavy disabilities on the Jews, and passed a long series of disciplinary measures, for which evidently the time was fully ripe. It also enacted *inter alia* that throughout the Christian church metropolitans should hold provincial councils yearly to correct abuses, to reform morals, and to enforce the statutes of general councils.

Amongst the prelates who passed this decree were the representatives of the Scottish church—the Bishops of St. Andrews, Glasgow and Moray, and the abbot of Kelso in person, and a number of unspecified deputies in name of the other prelates of Scotland. They had been pronounced to be outwith the provinces of York and Canterbury, but as they notoriously had no metropolitan of their own, their anomalous position was specially emphasised by the decree they had assisted in enjoining on the whole of Christendom. And now, or soon after, they took whatever steps were necessary formally to impress upon the Holy See that the church they represented was not in a position to carry out this laudable instruction without the special assistance of the Pope and the grant of autonomous powers never as yet conferred.

A few months after the dismissal of the council Innocent died; and it was reserved for his successor, Honorius III.,

to take action in the troublesome case of the status of the Scottish church.

The question of synodical assembly was meanwhile complicated by a more difficult one. As we have seen, King Alexander petitioned in 1221 that he might be crowned by a legate of the Holy See, not unnaturally persuaded that the moment was propitious. King Alexander had been intimately associated with the Archbishop of Canterbury and the English barons in the struggle that secured Magna Charta, while at the same time English relations with Rome were far from cordial. Since near the beginning of the reign of Henry III., from 1220 onwards, the English nation had been strenuously engaged in throwing off the humiliating tutelage of the Popes to which John had, in 1213, subjected it. Archbishop Langton had, in 1221, secured the recall of the papal legate who had in galling fashion ruled England as a papal fief, and a succession of papal demands had been summarily rejected. Alexander might have hoped that his services to the English national cause at home would make English opposition to his requests at Rome less bitter than heretofore; and he might at least fairly expect that the Pope would be less willing to defer to English jealousy of Scottish aspirations.

But England proved still a lion in the path of the Scots. The Pope saw himself compelled to refuse Alexander's petition unless the King of England and his bishops could be got to assent—a rather hopeless condition. When the same petition came before another Pope in 1233, it was the Archbishop of York who expressly argued that the desired favour would be an encroachment on the rights and privileges of the see of York as well as of the English crown.

The petition of the Scottish bishops for powers to carry out the Lateran decree as to provincial councils irrespective of York was clearly open to the same criticism from the jealous archbishop, but on the whole stood on a different footing and was otherwise answered. As might have been expected,

Honorius did not openly defy York by making St. Andrews an archiepiscopal see—for that the opposition of England had again and again proved too determined and too powerful. And it may be that neither the Scottish king nor his bishops really desired for Scotland at this time the grant of the pallium. Alexander II. was not disposed to be the sore saint<sup>1</sup> for the crown his great-grandfather had proved, and, like his descendant James III., may not have wished for an archiepiscopal rival near his throne; and now, as ever after, the Catholic bishops of Scotland were unwilling to recognise a more than formal precedence on the part of St. Andrews, or to see its bishop exalted to direct authority over his brethren.

The diplomatic result was the bull of 1225, which met the immediate necessities of the case; and, so long as the bull of Clement in 1188<sup>2</sup> was not revoked, could not reasonably be protested against by England. Some of the Scottish bishops had represented to the Pope that in a country so remote as Scotland, which had no metropolitan to summon a provincial council, the statutes of General Councils were not duly observed and many irregularities were allowed to pass unpunished. In view of these facts, and of the recent decree of the Lateran Council, the bull authorised and commanded the Scottish bishops to hold a provincial council by authority of the Apostolic See, without the co-operation of a papal legate—that is, without any assistance from outside the country.

Lord Hailes noted, what is sufficiently noteworthy, that the bull gave authority ‘for holding a council,’ and inferred that the Scottish prelates ‘sagaciously’ took advantage of its ambiguous style to treat it as of perpetual authority. Dr.

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<sup>1</sup> Bellenden first used this memorable phrase (1533) in the form ‘ane soir sanct,’ adapting Major’s *inutilis* and interpolating it into his translation of Boece. Lyndsay has (1539-40) ‘ane sair sanct’ in the *Thrie Estaitis* (line 2978).

<sup>2</sup> See p. xxvii.

Robertson thinks this view disrespectful to the good faith of the bishops addressed, and inconsistent with the object of the Pope who issued the bull, as well as contrary to the interpretation received without question at the time. But if we remember how pertinaciously England resisted at Rome *every* concession to Scotland which might be interpreted as recognising the independence either of her crown or of her church, and keep in view the fact that the Scottish king and bishops were even now as of old trying all expedients to secure any and every such concession, it will seem not unlikely that all the devices of diplomacy would be used by Scotland to overreach when it could not overbear English opposition.

In 1225 England might be counted on as in 1221 to raise difficulties : in this last enterprise of the Scots it would be but natural that the English agents in Rome should discover rather the desire to secure quasi-metropolitan privileges for their church than zeal for the observance of the decrees of General Councils. It is hardly unfair to the bishops and their astute leader, Malvoisin, Bishop of St. Andrews and late chancellor of the kingdom, to suspect that the full enfranchisement of their church lay at this time at least as near their hearts as any of the Lateran canons. That the English bishops could hold provincial assemblies amongst themselves, while the Scottish bishops could not, was humiliating to our ecclesiastical patriots, and an evidence to the world that Scotland lacked something of the dignity of a free Christian nation.

A bull definitely granting to the Scottish church the perpetual right of holding provincial councils would inevitably have been resisted by the English as practically making Scotland a metropolitan province of the church ; whereas it would have obviously been too churlish in York and Canterbury to oppose so laudable a desire of the Scottish bishops as the permission, by papal authority, to obey the Lateran Council and to hold a provincial synod amongst themselves for specified purposes,



without the special legatine powers conferred in 1201, in 1212, and in 1221. It is eminently unlikely that the papal draughtsman of the bull was ambiguous by accident, or that the Scottish clergy would not at once have had the blunder rectified, had not policy suggested another course. The ambiguity in the bull may well have been designed to disarm English opposition, and, as would be perfectly well understood by the Scottish leaders, to grant without seeming to grant an autonomous dignity the Scottish church had long been striving for. Possibly also further oral and confidential negotiations at Rome, not communicated to England, may have secured such extension of the permission as to render it practically a grant in perpetuity. Without at least some definite understanding with Rome, the successive meetings of the council would have been not merely irregular but wholly invalid.

In Scotland the bull was interpreted in the larger sense from the very first, and immediately given effect to; and when it had held a succession of councils on this understanding, the *Ecclesia Scoticana* had manifestly attained to one of the most conspicuous privileges of a self-contained national church, with the right of expounding and applying the laws of the church universal, of issuing injunctions and correcting the refractory, almost exactly as metropolitan synods were wont to do. The first meeting of the provincial council marks, as has been said, an important stage in the history of the nation as well as of the church.

If we have regard to all the circumstances of the case, it is impossible not to see in the establishment of a Scottish provincial synod, sanctioned by apostolic authority and recognised throughout Christendom, an episode in the secular struggle for full national rights against the imperialist ambitions of England. For centuries still England was to employ against Scottish aspirations all the arts of casuistry and diplomacy, all the advantages of her vast political influence and her incomparably greater force of arms. And Scotland, con-

stantly borrowing from England and employing against her one after another the weapons of her higher culture, her more civilised laws and institutions, was destined not merely to hold her own, but occasionally to score successes. The acquisition of the new synodical privilege from the apostolical fount of authority was one of them.

We know not when precisely the constitution of the synod was definitely arranged. Presumably it was soon after the bull authorising the first meeting, perhaps after further but unrecorded negotiations with Rome had made the privilege permanent. As in the earliest statute regulating the procedure of the synod (Statute 1) the prelates go a little out of their way to describe themselves as holding a meeting 'after the manner of our predecessors,' the annual meetings had apparently been for some time a recognised privilege and an established usage.

The unusual type of constitution they did adopt is chiefly remarkable for the care they took to guard against their quasi-metropolitan collective powers being held to imply even the quasi-metropolitan pre-eminence of any one of them. The foundation of the whole code, the first and second statutes of the council, seems expressly designed to nip in the bud any hierarchical pretensions of one member over the rest. So far were they from recognising St. Andrews as naturally and historically the spiritual metropolis of the country, that they were careful to concede to the 'Episcopus Scotorum' only the very smallest degree of formal precedence, and this merely at the commencement of the proceedings of the first meeting. Then, as in the fifteenth and sixteenth centuries, old local jealousies were still rife. St. Andrews had not like Canterbury or Armagh a recognised right to pre-eminence from the first founding of the bishopric; Glasgow, a much more ancient episcopal see, had never in any way been subject to St. Andrews, and was determined never to be; Aberdeen and Moray would be equally unwilling to take lower rank than

heretofore: and the statute of foundation clearly recognises that the foremost amongst the bishops was to be strictly *primus inter pares*.

Bishops, abbots, and conventual priors—priors who were heads of minor monastic houses—were the only members named at first. Ultimately we find in attendance deans, archdeacons, and claustral priors (such as in the greater houses were subordinate to the abbots), as well as the clergy of collegiate churches and other dignified clergy, together with certain doctors of canon law and theology, and doctors of civil law as commissioners for the king. The bishops were to open the proceedings in turn by preaching a sermon, beginning with the bishop of St. Andrews; at the first meeting only did he take even this small measure of precedence over the rest. The synod was then to choose a president regularly to summon the meetings, preside over them, enforce the observance of their decisions with their collective authority, and punish transgressors with the severest ecclesiastical censures.

The president was to be chosen by the members from amongst their own number, the choice being, however, presumably limited to the episcopal members; and he was to hold office only for a year, from one meeting to the next—in sharp contrast to the rule in normal provincial synods, and in curious anticipation of future Protestant general assemblies with their annual moderators.

The title of the president was, like that of the later moderator, to be markedly non-hierarchical, without even ecclesiastical significance or associations; the new functionary was to be called conservator of the ordinances of the council. The word conservator was heretofore familiar—especially in this very century—in connection rather with political institutions and academic privileges. Thus the twenty-five English barons commissioned to see that King John kept Magna Charta seem to have been very soon, if not at first, referred to as conservators. And when in 1244 the magnates of England

arranged for a like body of their number to keep Henry III. within the bounds of the constitution, they expressly said: *et erunt libertatum conservatores*. Already in 1200 there was at Paris a 'conservator of the royal privileges of the university': near the middle of the century we find, also in connection with the university, a 'conservator apostolic' for cases that fell within the jurisdiction of the papal see.<sup>1</sup> The thirteenth œcumenical council at Lyons in 1245 regulated and limited the power of *conservatores* generally; they must defend those whose interests are committed to them from violence or oppression, but are to have no share in juridical proceedings (4th canon of the council). In 1254 Oxford, like other universities, had 'conservators of the rights, liberties, and immunities of the university.' Father Taunton's *Law of the Church* (1906; p. 250) defines conservator as 'a judge appointed by the Pope to preserve the rights and privileges of certain bodies of persons against manifest injuries or violences without judicial investigation.' Earlier and later, the name had a legal or political not an ecclesiastical significance—commissioners to see justice done between man and man or between one authority and another, to maintain privileges and prevent encroachments. Possibly the non-committal name was arranged to soothe English susceptibilities on the old quarrel, as well as to avoid stirring intestinal jealousies. The conservator of the ordinances of the council of the Scottish church was accordingly not named from the humbler office of recording or preserving the decrees, but from that of seeing that they were duly executed by all and sundry.

A modification of the title which we find almost from the first, conservator of the privileges of the Scottish church, seems to imply a higher conception of the powers or a development in the dignity of the president of the council; and ultimately conservator or the lord conservator (*dominus conservator*)

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<sup>1</sup> Rashdall's *Universities in the Middle Ages* (1895).



came doubtless to connote all the various duties of the official head. As summoner and president of the council the lord conservator performed archiepiscopal functions; when from the end of the fourteenth century the right of appeal was recognised from the bishop to the conservator, and from the conservator to the council, it was again made plain that the quasi-metropolitan jurisdiction resided in the council and not in its temporary president. Vernacularly the holy synod was known in Scotland as the *seinzie* or *senye*,<sup>1</sup> a word which, like the old English *seene* or *cene* and the French *sesne* or *senne*, is a softened form of *senatus* (not of *synodus*). Even more commonly the name of *seinzie* was given to the consistorial court presided over by the bishop or his official, as often in Lyndsay's *Thrie Estaitis*, where 'Sessioun nor seinzie' contrasts court of session with episcopal court, civil with canon law.

We know that in a general way the king's parliament recognised the council and gave it sanction and support; the precise relation of the spiritual court to the civil power was never very precisely defined. It was understood that it must not encroach on the royal prerogative, and to some meetings of council the king commissioned two doctors of the civil law to see that his dignity was not invaded. The supremacy of parliament seems to have been maintained; some decisions at least given in the council were liable to be referred to parliament as a court of appeal. At times when we have no record of church councils being held, parliament takes up and decides questions of ecclesiastical import—doubtless with the advice and assent of the clergy, as is on some occasions expressly recorded. At least one parliamentary edict of this kind seems to imply that it proceeded from the estate of the clergy alone—the parliament in this case acting on what was called in church history a *concilium mixtum*, the chamber of nobles practically leaving the discussion and decision of ecclesiastical

<sup>1</sup> See Robertson's *Statuta*, vol. i. p. clxxxiv, note; vol. ii. p. 272, note on Statute 71.

questions to the chamber of prelates. In the later period of its history—apparently after it was presided over by an archbishop exercising full and permanent authority—the council was formally called a general and provincial council (pp. 135, 139). But the usage is not apparently quite uniform. Dr. Robertson thought an assembly of the clergy summoned, at another than the statutory time and for a special purpose, was technically a convention (as on pp. 244, 246, 248). But the great ‘provincial council’ of 1549 (p. 84) refers to itself as ‘the convention or council’ (p. 118); and on p. 255 we have one and the same assembly called both ‘general provincial convention and synod’ and ‘general provincial council.’

Again and again we find the Scots parliament passing enactments which it then directed the council to re-enact. And the council seems to have been on the whole somewhat too complaisant; in 1429 Pope Martin v. took strong measures with the Scottish churchmen for having abetted James I. and his parliament in subordinating the ecclesiastical to the secular authority, and so compromising spiritual independence and the rights of the church.

The parliament evidently regarded itself as entitled to issue orders to the council. In June 1535<sup>1</sup> the Three Estates not merely resolved that a general council should be held, but fixed the place—the Blackfriars Convent in Edinburgh—and the date—the 1st March of the following year. And they agreed that the Archbishop of St. Andrews should be ‘requirit’ by the king’s grace to summon and hold the same, the whole clergy being warned to attend; insisting that if he refused or found impediments in the way the king should send to the Pope for a breve empowering any two bishops to summon and hold the proposed council—a threat it might have proved difficult to carry out for various reasons. In numerous other ways the Estates seem to have intruded into the ecclesiastical

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<sup>1</sup> Thomson’s *Acts of Parliament*, vol. ii. p. 342.

province. Not merely did the Estates deal with many ecclesiastical matters on their legal side, but they sometimes seem to have tackled what would at all times be counted distinctively spiritual interests. Thus the parliaments of James v. undertook again and again to maintain the freedom of Halikirk and Kirkmen; took cognisance of disputes between abbots and bishops as to jurisdiction, claims of rival claimants to abbeys, and charges against such of surreption or unfair intriguing, and questions of nomination and provision to benefices; legislated for the honour of the 'haly sacramentis,' the worship of the Virgin Mary, 'the pape's auctorite,' and the due honouring of images: they also settled what was to be done 'when our soverane lordis liegis sustenis dampnable the said horrible sentence of cursing for xl dais' (indicated in the *Statuta as insordescentes*); and passed laws against heretics, heresy, and 'al sic filth and vice,' Lutherans, 'bukis and werkis of the said Luther, his disciplis or servandis; against blasphemy and profanity, and against disturbing the services in churches.<sup>1</sup> It should be remembered that in these parliaments the prelates—bishops abbots and priors—seem sometimes to have outnumbered the earls and lesser barons put together.

Dr. Robertson infers—erroneously as I must think—from the writ commissioning two doctors of the civil law to be present at the council in the king's interest, that the state asserted its right to a seat and a voice in the councils of the church. The general principle of the Roman church was that only at œcumenical councils under certain conditions could royal commissioners be present at all. But it was not unusual for certain chosen laymen to be summoned to provincial synods, though only rarely were they accounted members. The rule was that bishops only had the *votum decisivum*; in practice abbots also exercised the right, though not *jure divino*, but *institutione ecclesiastica*; others, such as doctors of divinity and canon law,

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<sup>1</sup> See p. lxxiv.

attended as assessors or experts, and had at most a *rotum consultativum*; notaries had of course no vote; and royal commissioners might be present, in order at need to protest and appeal, without having any actual 'voice' or vote in the normal proceedings of the council.<sup>1</sup>

The synod of Nice commanded that provincial councils should be held twice a year, and this was the original practice of the church: but gradually, especially after the seventh or eighth century, meetings once a year came to be recognised as more practicable and as sufficient, though hardly canonical, according to Gratian.

In the somewhat elastic constitutional arrangements of the Scottish state conflicts of jurisdiction were the less likely to happen that the powers and duties of provincial councils were pretty strictly limited, if not by canon law, at least by usage. Nothing can well be more misleading than to look on the council as an analogue of the later Presbyterian General Assembly, a democratic body which exercised with a peculiar freedom legislative as well as administrative and judicial functions. Provincial councils might not define doctrines, nor were they expected to initiate new legislation: their design was rather to give collective weight to the same essential duties and functions as bishops were called on singly and in their diocesan councils to discharge. They expounded, applied, adapted, and saw to the observance of laws 'elsewhere defined'—especially at general councils—demanded and secured relief from grievances, arbitrated in disputes, composed quarrels, and sought to bring the influence of the church to bear on the people with more effect than bishops individually could do. They supervised the administration of the church as a whole, and of the dioceses severally; maintained discipline amongst the clergy generally or so far as this duty was not overtaken by the bishops each in his own diocese; and in a higher degree

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<sup>1</sup> See Hefele's *Konziliengeschichte*, vol. i.



than the bishops singly, had the control of ecclesiastical censures. Behind them they had the civil arm with its powers and sanctions, and from time to time invoked its aid.

The attending of diocesan or provincial councils was, then as now, a subordinate one amongst the multifarious duties of a bishop or abbot. The functions of the provincial council were also eminently comprehensive and various; a comparatively small proportion of its business was of a kind that would naturally be recorded as *statuta* in any sense of the word. And the statutes we have concern much more the legal proceedings conducted by the bishop or his official in the bishop's court, than the administration of dioceses or Christian congregations. But since no other regular minutes or records of any other part of the proceedings of the council have been preserved, we have to gather what we can discover of conciliar activities from incidental allusions in the general history of the period. It is perhaps not singular that those allusions are comparatively few, and in all probability convey no notion of the frequency of the synodical assemblies. But as in the whole period from the establishment of the council till the Reformation—more than three hundred years—references have been noted to at most some thirty meetings of the council, it may pretty safely be inferred that the prelates of the Scottish church were during a great part of this time not very assiduous in exercising their synodical privileges, and did certainly not assemble annually. If our contention is well founded that the Scottish clergy sought the establishment of the council largely in proof and illustration of their independence of York, then a comparatively small number of meetings had secured once for all this national ambition. On the other hand, if such a body had been a recognised power in the land, and had met anything like once a year, it is incredible that it could have kept so closely to routine business, and abstained from interference with public affairs, as not to have attracted more frequently the attention of the chroniclers. The

frequent political crises at home, and the long war of independence waged against England were no reason why the church should have been able to dispense with the collective advice and guidance of its appointed leaders—rather the contrary. But the general canon law of the church, elucidated by the more varied experience and practice of the English courts, seems to have been regarded as sufficient for all ordinary business. And once it was recognised that king and parliament spoke with even more authority than the council, it may have seemed to the clergy in general, who exerted increasing influence with the crown and the estates, and especially to the churchmen who so often wielded the great offices under the crown, that save in special cases, the interests of the church, in so far as they were not attended to by the bishops and the diocesan courts, were as safe in the hands of the Three Estates as in those of a specifically ecclesiastical court of more limited authority. In the sixteenth century, however, the documents again and again speak of the meetings as annual (p. 231) or as yearly or oftener (pp. 150, 238, 254).

As has been indicated, it is not always easy to gather from brief allusions to ecclesiastical decisions or decrees whether they proceeded from parliament, the lords spiritual in parliament, a provincial council, a diocesan council, or an ecclesiastical council with judicial or criminal assessors commissioned to support the clergy with the secular arm; and Dr. Robertson's list of recorded provincial councils is apparently not to be regarded as exhaustive.

The 'Consale Generale' at Stirling in 1440 and the *Concilium Generale* at the same place in 1443<sup>1</sup> were councils of the kingdom, or parliaments, not ecclesiastical councils of any kind. And when Knox in his *History*, at the year 1543, speaks of the 'questioun of abolishing of certane tyrannical actes made befoir, at the devotioun of the Prelattis, for manteanyng of

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<sup>1</sup> Thomson's *Acts of Parliament*, vol. ii. pp. 32, 33.

thair kingdom of darkness,'<sup>1</sup> he is obviously referring to acts of parliament.

The greater heresy trials seem, in some cases at least, to have been carried on before provincial councils, though sentence of death was actually pronounced by a secular court or a criminal justiciar.<sup>2</sup> Thus Fordun records that in 1406 Resby, the English Wycliffite, was burnt, 'having been condemned as a heretic in a council of the clergy under Master Laurence of Lindores, inquisitor of heretical pravity.'<sup>3</sup>

A provincial council must apparently have been held in 1528 in connection with the trial of Patrick Hamilton for heresy: the archbishop's citation issued to 'the dean of our Christianity of Lothian' and the clergy of the deanery, commands them to summon Hamilton 'to appear personally before us and our counsellors the lords bishops, abbots, priors, professors of sacred scripture, religious, and others sitting with us for the time being in our metropolitan church of St. Andrews, the primatial church of the kingdom of Scotland.'<sup>4</sup>

Alexander Alane or Alesius, formerly canon of St. Andrews, who fled to Germany and became an eminent Lutheran theologian, addressed to James v. from Wittenberg in 1533 an *Epistola contra decretum quoddam Episcoporum in Scotia*, and protested against their prohibition of the circulation of the Scriptures in vernacular translations. And in the series of controversial pamphlets thus inaugurated, he and his Catholic opponent Cochlaeus seem to refer to this decree of the 'king's bishops' as if it were a statute formally passed by an ecclesiastical council—presumably in that case a provincial one. From Alesius we further learn (in the above-mentioned *Epistola*) that by the command of 'the most reverend lord, the bishop [*sic*] of St. Andrews, primate of the whole realm of the Scots,' he, Alesius, held an oration in 'a synod of bishops

<sup>1</sup> Laing's edition, vol. i. pp. 98-100.

<sup>2</sup> See notes on pp. 134 and 148.

<sup>3</sup> Goodall's edition, vol. ii. pp. 442, 443.

<sup>4</sup> Dr. Mitchell's *Scottish Reformation*, 1900, App. B., p. 290.

and priests' in 1529—on oration apparently against the incontinence of the clergy, which was interpreted by the Prior of St. Andrews (the notorious Patrick Hepburn, afterwards Bishop of Moray,<sup>1</sup> as a personal attack on himself, and led to the imprisonment of the indiscreet orator. A 'synod of bishops and priests' sounds like a provincial council, as in a diocesan synod only one bishop, in this case the archbishop, would have been present.<sup>2</sup>

The *Three Priests of Peblis* presents an exalted and attractive conception of the Estate of the Spirituality in its best days, which may reflect a genuine tradition, though it is sharply contrasted with a caustic impeachment of the inefficiency of the spiritual peers of Scotland in the writer's own sixteenth century:—

'Than till his Clergie come this nobil king ;  
 "Welcum bishops," he said, "with my blissing  
 Welcum beidmen,<sup>3</sup> my blesse and al my beild ;  
 To me ye ar baith Helmeit, Speir, and Schield.  
 For richt as Moyses stude upon the Mont,  
 Prayand to God of Hevin, as he was wont ;  
 And richt sa be your devoit orisoun,  
 Myne enemies sould be put to confusioun.  
 Ye ar the gainest<sup>4</sup> gait<sup>5</sup> and gyde<sup>6</sup> to God ;  
 Of al my Realme ye ar the rewl and rod.  
 It that ye dome<sup>7</sup> I think it should be done ;  
 Quhen that ye shrink, I have ane sunyie<sup>8</sup> sone.  
 Thus be yow ay ane example men tais,<sup>9</sup>  
 And as ye say than al and sundrie sayis :  
 It that ye think richt or yit ressoun,<sup>10</sup>  
 To that I can nor na man have chessoun.<sup>11</sup>  
 And that ye think unressoun or wrang,  
 Wee al and sundrie sings the samin sang."

<sup>1</sup> See p. xciii, note.

<sup>2</sup> For Alesius, see Dr. Mitchell's *Reformation in Scotland* and the Pamphlets of Alesius noted in Dr. Hay Fleming's Appendix I. to that work.

<sup>3</sup> *Beidman*, man of prayer. <sup>4</sup> *gainest*, more direct. <sup>5</sup> *gait*, way.

<sup>6</sup> *gyde*, guide.

<sup>7</sup> *dome*, doom, decree.

<sup>8</sup> *sunyie*, hesitation.

<sup>9</sup> *tais*, takis, takes.

<sup>10</sup> *ressoun*, reason.

<sup>11</sup> *chessoun*, objection.



## III

In the bull of 1225 Honorius cites as the reasons the Scots bishops urged in support of their request that in Scotland the statutes of General Councils were neglected, and very many *enormia* committed, but unpunished. In his preface Dr. Robertson renders *enormia* as 'enormities.' Probably the pope used the word in its more normal sense, and did not mean thus publicly to charge the Scots with 'very many enormities' in our sense of gross and monstrous offences—a comparatively late use both in Latin and in English. The statutes of General Councils were neglected, and so breaches of the canon law would naturally take place.

That enormities and atrocities were common enough in Scotland then and afterwards was, alas, only too manifest; the bishops might well have lamented to the holy father that 'the Scottish region too greatly abounded in enormities,' as Statute 51 says it did in robbers. The very reforms that had within the past century reconstituted the church had themselves provoked resentment, resistance, and *enormia* of a sufficiently startling kind.

Turgot's melancholy failure is some measure of the aggressiveness of the conservative opposition to the ecclesiastical changes. And though we know little of the history of the Celtic resistance to compulsory changes introduced into the doctrines and jurisdiction, the rites and traditional usages of the old national church, we have in the history of the period some significant hints. Nothing can well be more improbable than the assumption that the Celts of Scotland and the Celtic church acquiesced in the stunning series of innovations which Margaret and her sons established in their country, and imposed on them with a high hand. The Celts have rarely been willing to resign the distinctive principles of their church and accept new doctrines, institutions, and rites at the command of kings and foreign gentlemen, royal courts or church

synods. Nor did they now: witness the embittered and persistent opposition—with which the ecclesiastical innovations had probably as much to do as personal and dynastic reasons—to every king of Malcolm's family; to Duncan, as well as to Edgar, Alexander 1., and David, Margaret's sons, and their descendants, Malcolm the Maiden, William the Lion, and Alexander 11. By English and Norman aid Duncan expelled his uncle Donald; but his new Celtic subjects slaughtered English and Normans impartially, and presently Duncan himself, though he had promised to bring in no more 'strangers.' Edgar, too, secured his crown by armies of Lowlanders, or English and Normans, and showed his gratitude to the southrons—and defiance to the Celts—by gifts to St. Cuthbert of Durham. Alexander 1. had to face the determined enmity of the North, overcome only after two hard-fought campaigns, in one of which he nearly lost his life. He founded a monastery at Scone, and filled it with Augustinians from Yorkshire, expressly in commemoration of his victory over the Celts; apparently his foundation of the new sees of Moray and Dunkeld, in the hostile Celtic area, have the same significance—the supersession of the native Celtic church by the Anglo-Catholic establishment. The extirpation of their distinctive principles, the reformation out of recognition of all their most cherished institutions, must have fixed a deep gulf of hatred between the Highlanders and the innovating southron kings and bishops.

David had to fight for his crown with his northern subjects in 1130 and 1137, and again it was to his English-speaking adherents and Anglo-Norman allies he owed it that he held his own. It is impossible to say whether his foundation of Catholic sees in Caithness and Ross was the cause of Celtic discontent or thankoffering for its suppression. But the establishment in Scotia proper of additional sees for David's church at Aberdeen, Brechin, and Dunblane, and of monasteries at Kinloss and elsewhere, as well as the suppression of the Culdees

wherever they survived, must have kept the wrath of Highland hearts full to overflowing. That David frankly accepted—and no doubt carried out there and elsewhere—the principle of open, official persecution, is plain from his warrant for ejecting from their homes, without mercy or charitable allowance, the unhappy Lochleven Culdees who were unable to conform to the new order of things. Only by force of southern arms did Malcolm iv., William, and Alexander II. maintain the dynasty against the undying enmity of the north. Immediately on the accession of Alexander, and just ten or eleven years before our Council assembled for the first time, two several and distinct Celtic pretenders challenged Alexander's right to reign, staked their heads against the alien and lost them, at the very time when Alexander's bishops were preparing to represent a feudalised, de-Celticised, catholicised Scotland at the Lateran Council of 1215. After our council was fairly established and enacting its *statuta* systematic risings in the north troubled every new reign, and must have made the continuance of these meetings highly problematical.

Iona, which had of old witnessed long and bitter strife and schism amongst the brethren, the slaughter of one coarb of Columba by another, as well as red martyrdom at the hands of the heathen, was most appropriately the scene of the last fierce protest against southron intrusion.

In 1203 a Benedictine abbey had been endowed, built, and solemnly taken under the protection of St. Peter by the same Pope Innocent III., who held the Lateran Council of 1215, so often already referred to. But this was all manifestly 'in despite of the family of Iona'; and those who represented those rights resolved to maintain them. A large body of the clergy of the north of Ireland came to the rescue; headed by the bishops of Tyrone and Tyrconnel and the abbots of Derry and Armagh, most venerable and sacred names, they carried an armed 'hosting' or warlike raid into Iona, and systematically pulled the new Benedictine monastery down. The

Benedictines, whether Cluniacs or Tyronensians, Celts or Southrons, would hardly see their holy and beautiful temple pulled bodily about their ears without manful defence; and so we have a last glimpse of the ancient Celtic church fighting after the good old Irish way, in the noise and dust of crashing roofs and pillars, amid the shattered sculptures and desecrated altars of the church of the Roman obedience.

The multiplication of bishops, with compulsory powers and new dues exigible from their flock, was not everywhere welcome; from the *Statuta* we gather that after as before the establishment of the council there was trouble of various kinds about tithes, and resistance to canonical claims had to be dealt with. The first meeting of the council might be said to take place under the shadow of an enormity which—to adopt and adapt the words of a later church council of much weight in Scotland—both in itself and by reason of several aggravations, was calculated to be exceptionally heinous in the sight of any bench of bishops. Only three years before, in 1222, Adam, bishop of Caithness, had been literally roasted to death by his own people, merely for claiming—somewhat too insistently, as was thought—his rights in the way of tithes.

More ordinary enormities due to ambition, unholiness, passion, and the thirst for vengeance, must constantly have exercised the bishops collectively and severally. This kind goeth not out by the most frequent or dreadful excommunication, and too often the civil arm was too short and weak to repress or punish. Much of the romance of Scottish history is closely bound up with enormities. Two kings guilty of assassination, two kings themselves assassinated in the following centuries, had abundant counterparts in every rank of life. The champions of their descendant, the Stewart queen—*illa peccatrix*, as a good Catholic subject<sup>1</sup> of hers called her—insist that her *enormia* are palliated, if not justified, by the *enormia* she had

<sup>1</sup> Father Edmund Hay, S.J. See Father Pollen's *Papal Negotiations* (Scot. Hist. Soc.), p. 507.



to endure at the hands of others. Most singular enormity in direct connection with the council itself was it that the most reverend father in Christ, the archbishop and primate who summoned and presided over the last meeting, was himself sent to the scaffold, and, to add the greater ignominy, hanged in full pontifical vestments. And it is curious that just some six months later one of the bluest-blooded of the Scottish nobles was found imitating the rude Scandinavians of Caithness in 1222. The fourth earl of Cassillis, to compel the commendator-abbot of Crossraguel to resign his rights in the abbey, 'set his legs to a great fire and extremely burnt him, that he was ever thereafter unable of his legs.' No doubt the repression of enormities did actually occupy much of the time of the Scottish bishops, whether singly or collectively in council.

## IV

In contrast with other more pressing duties, the Scottish prelates, we must hope, regarded the enacting of statutes and canons, or adapting them to local needs, as comparatively inessential. For until after the Reformation had been firmly established in England, little over a hundred canons were, so far as we know, enacted by the council; of these most are very brief, some of them are singularly rudimentary, and taken collectively they cover only fragmentary aspects of ecclesiastical life. Possibly part of those assigned to the council were diocesan rather than provincial or general, and if we add to the whole such synodal decrees of St. Andrews and Aberdeen as have been preserved and been printed by Dr. Joseph Robertson, along with the others, we have a total of only a hundred and sixty-seven statutes to represent Scottish or local canon law till the year 1549. In England the local canon law, Professor Maitland has said, was always 'meagre in the extreme.' But Lyndwood is voluminous and encyclopædic in comparison with the slender code of Scottish mediæval canon

law. The stress of the Reformation stirred up the council to unwonted energy, and the years 1549-59 saw the total of canons, statutes, or paragraphs brought up to nearly three hundred, more than a dozen of the later statutes being mere transcripts from the canons of the Council of Trent.

English canonists followed closely the *jus commune*, and seem to have always treated papal decretals as a supreme authority, save where English civil law had taken over certain departments of what elsewhere was regarded as in the ecclesiastical sphere, like the laws of marriage. The Scottish canonists evidently relied even more closely on the decretals and the general *jus canonicum*; and the few special statutes they did enact seem rarely to have been accommodated in any peculiar way to Scottish conditions. Presumably the points on which they insisted were points on which Scots and Scottish churchmen specially needed to have the church laws brought home to them.

Provincial councils were seldom ambitious to formulate their decrees in their own words if ready-made formulas were elsewhere available, and councils in any one country or province of the church seem to have incorporated without note or comment amongst their own enactments, not merely canons of œcumenical councils, but, where they seemed useful or suitable, the decrees of any other provincial council in Christendom. But surely no national church ever depended so largely on other provinces as did our Scottish one. So many of the Statutes can be traced in whole or in part, verbatim or in substance, to other conciliar decrees, œcumenical, provincial, or diocesan, or to the constitutions of individual bishops, that where we fail to discover the original, we are inclined to believe the Scottish legislators were nevertheless following some extant original. The most singular fact is that so much of Scottish canon law was borrowed direct from England.

We naturally expect to find the Scottish statutes reproducing

the provisions and the terminology of the general councils; we should find it almost inevitable that they should in substance agree pretty nearly with corresponding English ones. But in the special relations of Scotland to England, and of the Scottish church to the metropolitan sees of Canterbury and York throughout the whole period, we should count on them to take over relevant acts from the councils of Italy and France rather than of England. And it is startling to find so many of the Scottish statutes transcribed verbatim from, based on, or obviously suggested by, the canons or constitutions of London and Salisbury, Oxford and Canterbury, and—most noteworthy—even York and Durham; sometimes with a word or so altered to suit—*Scotica* being substituted for *Anglica*, for example. We know that the bishops of Scotland, whether of native or foreign birth, strove as strenuously to defend the independence of the Scottish church as they and their countrymen did to assert and maintain its political independence. And so long as the Scots were straining every nerve in this struggle, and the church question was not finally decided in the eyes of Christendom, it would seem most natural that in the matter of the canon law and provincial statutes dealing therewith, the Scottish fathers should seek carefully to avoid all suggestion of dependence on or deference to English synods. Yet, as Dr. Robertson has indicated in his notes, they began copying directly from England at the very beginning of their activity, and long continued to look largely to England. Statutes 16, 17, 18 are transferred from the canons of the council at London in 1237; 22 and 23 are, wholly or partly, from the canons of the Oxford synod of 1222; 56, 57, 58, 59, 60, 61, 62, 63, and 64, in the Aberdeen series, from the Sarum constitutions or Durham canons of about the same date; some eight or ten more are only less manifestly from the same source; and the comprehensive Statute 108, with over forty clauses, is a mere compendium of the constitutions of the famous reforming bishop of Lincoln,

Robert Grosseteste, and transcribed verbatim from the MSS. of his diocesan code. Dr. Robertson has noted the parallelism, more or less complete, to earlier English ones, of some thirty out of the first hundred and fifty statutes, and it would be easy to amplify the proofs that the Scottish fathers legislated with their eyes on the work of their English brethren. In many cases, no doubt, the bishops of Scottish sees were, especially in the thirteenth century, themselves from the dioceses where these English statutes were in force, and might in many cases, while they were yet in English cures, have helped to pass them or been compelled to observe them. But the conclusion is inevitable that Scottish churchmen as a body did, in spite of all their jealousy of English authority or jurisdiction within the Scottish frontiers, look instinctively to the church of England as the branch of the Catholic church from which they were sprung, and by a tradition established in the eleventh century assume that laws and institutions and usages approved by English churchmen for English dioceses were *prima facie* likely to be the most suitable for Scottish needs.

To understand at all the Scottish church's legislation, it is obviously necessary to know something of the subordinate sources whence it was, in so many cases, openly and directly drawn.

Innocent III. and his successor, Honorius III., had repeatedly used their exceptional influence in England to remind the English bishops of the abuses that had sprung up in the church during a long period of civil strife. The English bishops, under Stephen Langton, only too fully recognised the irregularities that abounded, including not a few for which they held the court at Rome itself responsible. The archbishop of Canterbury, who had been the ruling spirit amongst those who guided the great civil strife to a happy and successful issue, was apparently also the main-spring in the reform of church law that followed the restoration of normal conditions in the English state. In 1222,



seven years after the memorable gathering of the barons who signed Magna Charta, Stephen summoned at Osney, just outside Oxford, a council of his province, which has been called an ecclesiastical counterpart of the assembly at Runnymede: its constitutions were for English church history in some respects what Magna Charta was in the political sphere; they were and remain the earliest provincial canons which are still recognised as binding on English ecclesiastical courts. They apply to English needs the decrees of the recent General Council at Rome, touch church life at innumerable points, and, with the almost contemporary diocesan constitutions of Salisbury and canons of Durham, formed a veritable model code for the Scottish church also.

The Sarum constitutions were drawn up for his diocese by Bishop Richard Poore, to whom probably we also owe the famous *Ancren Riwle*. Spelman dated them in 1217; but Cossaert, in the great collection of *Concilia* of the church universal, edited by himself and Labbé (1671-2), pointed out that the last of them obviously contained an allusion to the Oxford Council of 1222. Wilkins, in his *Concilia* of the British churches (1737), accordingly referred them tentatively to 1223. But Wilkins, followed by Dr. Robertson, assigned to 1220 the Durham canons, though, as Cossaert had noted, they merely repeat verbatim, with one or two obvious corrections, the first seventy-five of the eighty-seven Sarum constitutions. The much more natural conclusion about the two series, accepted by Bishop Wordsworth, is that the Durham code is not in any part of it the work of Bishop Marsh, who held the see of Durham till 1226, but simply Poore's Salisbury series revised by him for his new see of Durham, and adopted by a diocesan synod assembled for the purpose, shortly after his translation thither in 1228. In that case the Sarum constitutions were extant when the Scottish council was established, and the Durham canons were published three or four years after it had begun to legislate.

To those sources of ready-made statutes the next decade added other invaluable materials in the canons of the great London council under the papal legate Otho in 1237, dealing largely with pluralities and other clerical irregularities.

But the most singular debt the Scottish church was to owe to English legislation is the curiously comprehensive Scottish Statute 108, which with its forty-two clauses deals very generally *de vita et honestate clericorum*, and is a triumph of summary codification. It occurs in the section called by Dr. Robertson *Statuta Ecclesiastica*, it being uncertain whether they were provincial or proper to some one diocese. But there seems no doubt that they were authoritative in some portion of the church of Scotland, possibly throughout the whole of it. Statute 108 of our series is, as Dr. Robertson recognises, simply the transcription of the table of contents appended to some of the manuscripts of the famous constitutions drawn up by Robert Grosseteste, the great reforming bishop of Lincoln, largely in accordance with the resolutions of the London council last mentioned, and addressed to the rectors of churches, vicars, and parish priests of his own diocese.

The Scottish statute begins with the usual *Statuimus*, but follows the list of items in Robert's constitutions so closely that from the English list it is possible to correct the text of the statute Dr. Robertson has given from the Scottish manuscripts. As Dr. Robertson has printed the table (at pp. clxxxiv-clxxxv of his Preface, vol. i.), from Dr. Luard's edition of Grosseteste's *Epistolae* in the Rolls Series, it is easy to see at a glance how closely the Scottish legislators followed in the English steps, where they stumbled slightly, and where in one or two places they deliberately diverged. In this one statute the Scottish church, or part of it, may be said to have adopted as its own the whole of the rules and principles for clerical life that helped to make the episcopate of Grosseteste memorable, not merely for the

see of Lincoln, but for England. If not directly 'operative' in Scotland, Robert's constitutions *in extenso* must have had validity in Scotland as explanatory. For the summary indication of the purport given in the English abridged table of contents and reproduced as a clause in the Scottish statute is, in several cases at least, barely intelligible and quite impracticable as law, without the aid to be derived from the complete text of the *Constitutio* for which it was originally a mere heading. This very compendious statute must have been interpreted and applied by help of the Lincoln constitutions at large, which fill nine and a half closely printed pages of Dr. Luard's edition, and almost equal in content the whole of the statutes of Scottish provincial councils referred by Dr. Robertson to the first century of its activity.

The English canons and constitutions described exercised quite exceptional influence on the Scottish code, which, however, borrowed also from earlier and later English synodical decrees. Altogether the extent to which the Scottish church leaned in this department on the English church is, considering the always strained relations between the two, perhaps the most remarkable feature about our Scottish local canon law.

## v

From the beginning, as was inevitable in the nature of the case, the great majority of the *Statuta* of the Scottish church concern themselves not so much with theology or religion, or the supervision of the congregations, as with the legal rights and standing of the church as against the state, of the church courts as against the king's courts, of the several churches as against the parishioners, the rights and duties of the clerical order, the penalties for their offences, spiritual censures generally, and, as regards the Christian people, the bulk of what is known as consistorial law. The *Statuta*, both

provincial (or national) and diocesan, concern mainly the work transacted in the episcopal courts—not the diocesan synods of the clergy, but the courts in which the bishop or his official sat as judge and decided causes and cases in accordance with the provisions of the canon law, general and special.

Canon law (*jus canonicum*) is, strictly speaking, as Dr. R. F. Littledale has said,<sup>1</sup> ‘that part only of ecclesiastical legislation ‘in and by synods of spiritual persons which is concerned with ‘the moral and disciplinary government of the Christian church, ‘and is embodied in the form of canons or rules. It is thus ‘distinct alike from the dogmatic decisions of similar synods, ‘embodied in decrees, affecting formularies and standards of ‘doctrine; from papal law (*jus pontificium*); and from enactments of the civil power upon ecclesiastical subjects (*jus ‘ecclesiasticum*), though the last often overlaps the canon law ‘proper.’ The sphere and influence of the canon law in pre-Reformation Scotland was quite disproportionately great—much greater than in England.

According to Cosmo Innes, the greater part of the law business of Scotland, both civil and ecclesiastical, was before 1532 done in the courts of the episcopal judges or ‘officials’ of St. Andrews, Edinburgh, and Glasgow. The court in the religious metropolis of Scotland, the court of the ‘official of St. Andrews principal,’ besides transacting the business of its own archdeaconry, exercised a jurisdiction of review over the court of the other archdeaconry of the diocese of St. Andrews, that of Lothian, at Edinburgh, and over the diocesan courts of all the sees suffragan to St. Andrews, as well as of those in the province of Glasgow. The official seems to have been appointed—by the archdeacon, apparently—in all the larger dioceses and wherever the business was large and constant. The bishop’s official was the only judge in matters of *status*—legitimacy, bastardy, divorce; he took charge of widows,

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<sup>1</sup> In his article ‘Canon Law’ in *Chambers’s Encyclopædia*, vol. ii. (1888).



orphans, and *personæ miserabiles*; of questions of slander, disputes between churchmen, and questions arising from covenants sanctioned by oath, wills, executry, and moveable succession. The management of notaries public fell to the official, and of all cases brought to his court by consent of parties; and as notaries were churchmen they preferred to bring their cases to the ecclesiastical courts, whose business was more important than that of all the sheriff courts, the king's council, or the judicial committee of Parliament.<sup>1</sup>

The same learned historical author gives elsewhere a reason for this large monopoly:—

‘For a long period preceding the Reformation, the officials or episcopal judges of Scotland had extended their jurisdiction over a great proportion of purely civil questions, in addition to suits which are now considered the only proper subjects of consistorial law. This encroachment of the ecclesiastical courts arose from the fluctuating and unsatisfactory nature of the lay judicatures prior to the establishment of the Court of Session in 1532, and the extreme unpopularity of that tribunal for some time after its institution; but it was promoted by the high character which several of the episcopal courts had obtained for the learning and impartiality of their decisions. There had arisen at an early period in Scotland a class of churchmen who studied the civil and canon law in foreign universities, and raised themselves to distinction and rank by their successful practice of it at home. From these were drawn the officials of all the greater dioceses; and it is not wonderful that litigants should prefer the jurisdiction of those accomplished lawyers to the hurried decisions of committees of Parliament. Where the matter in dispute was not of the proper jurisdiction of the bishop's court, it must have required the express or implied consent of the parties to bring it within its jurisdiction.

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<sup>1</sup> Cosmo Innes's *Scotch Legal Antiquities*, pp. 238, 239.

‘Such consent was very frequently given in contracts, and  
 ‘might be implied by the mere fact of recording the deed in  
 ‘the register of the church court, circumstances which per-  
 ‘haps occurred more frequently from the advisers and drawers  
 ‘of such deeds being for the most part churchmen.’<sup>1</sup>

## VI

Archbishop Hamilton’s Catechism, drawn up apparently by members of the Council, was—‘after the most elaborate revision, approved by the opinions and votes of the most prudent prelates in the whole realm, and of the most learned theologians and other churchmen taking part in the proceedings’—ordained by the council of 1551-2 to be put into the hands of all rectors, vicars, and curates of the church, and systematically read by them to their congregations. It is therefore practically a part of the legislation of the old church; or in any case it forms a quite invaluable supplement to the statutory enactments of the Provincial Council, and, as edited with a learned introduction by Dr. T. Graves Law,<sup>2</sup> illustrates in a way the Statutes themselves cannot do the attitude of the Council to Catholic doctrine and tradition.

In the *Statuta Ecclesiae Scoticanæ* or *Concilia Scotiae*,<sup>3</sup> Dr. Robertson printed all the statutes of the provincial and diocesan councils known to have been preserved, nearly three hundred in number, together with a selection of relevant documents and formulas. In an appendix he subjoined eleven documents or groups of documents intimately connected with

<sup>1</sup> Preface to the *Liber Officialis Sancti Andree*, edited [by Cosmo Innes] for the Abbotsford Club, 1845, pp. ix, x.

<sup>2</sup> See below, p. 144, note.

<sup>3</sup> *Statuta Ecclesiae Scoticanæ* is the bastard title in both volumes, and the running headline throughout the whole of volume ii.; the less descriptive *Concilia Scotiae* appears only in red at the top of the main title-pages, where it is followed by *Ecclesiae Scoticanæ Statuta tam Provincialia quam Synodalia quae supersunt*. The work was printed for the Bannatyne Club in 1866 (2 vols. 4to).

the history of the old church—canons, decretals, chancery brieves, papal and episcopal mandates and missives, with certain royal letters. In a second appendix, printed in the volume containing his Preface, he added a further series of documents which came to his hand later than the others, comprising compulsitors, captions, mandates, commissions, episcopal and archiepiscopal citations and monitions, synodal constitutions and ordinances, papal bulls, a royal letter and a royal grant, all bearing on Scottish ecclesiastical procedure or of interest for Scottish church history.

In the present volume will be found a translation of the Statutes and the documents in both appendixes. The translator has accepted Dr. Robertson's text, and, save in one or two places indicated by notes, followed it as closely as was consistent with intelligibility. But it should be noted that in not a few of the earlier Statutes, as Dr. Robertson fully recognised, the text is obviously imperfect or corrupt, and the translation—as is there indicated in an accompanying warning—more or less conjectural. Even where the text is indubitable, the Latin is often worse than doubtful, sudden transitions from one construction to another being not infrequent; and spellings like *celario* for *salario* (106), *reconsiliari* for *reconciliari* (163), *cincopati* for *syncopati*, etc., are hardly justified even by mediæval orthographic licence. Dr. Robertson printed in square brackets parts of words, whole words, groups of words, and, in headings, etc., clauses or sentences supplied by him. To indicate all these would have been impossible in a translation; but his square brackets have been here retained for headings added by him, and in cases where he had supplied the Latin equivalents for '[given above]' and the like. Elsewhere in the translation, square brackets indicate words added by the translator to complete the sense, or explanatory notes by him. Family names have been reproduced in the original spellings: names of places, in the Statutes given sometimes in Latin, sometimes in diverse vernacular forms, have, save in special

cases, been translated into their familiar modern shape. In the Introduction, when only numbers are cited, the reference is to the relevant Statute, not to a page.

It is no part of the translator's task to attempt anew what Dr. Robertson did learnedly and once for all. To his Preface, Notes, and other elucidations the reader is referred for information as to the several manuscripts (five in number), whence the text of the Statutes was derived, their dates and authority; the sources of the other documents printed by him; and the *apparatus criticus* in general.

In his Preface Dr. Robertson has analysed the main contents of the Statutes, so far as it was practicable to give a conspectus of rules and regulations so numerous and miscellaneous. This elliptical, often fragmentary, and quite uncodified body of practical legislation deals largely with the privileges of churchmen, as well as with their duties. In his Preface or his Notes, Dr. Robertson has pointed out the historical significance of the establishment of parochial registers of deaths and burials by Statute 161, and of banns of marriage and baptisms by Statute 251. The Table of Contents prefixed to this volume will enable the reader to understand the purport of the various series of documents in the body of the work and the Appendixes; and the Index furnishes another arrangement by subjects of the very multifarious matters dealt with. The whole book is in such moderate compass that no further classification of its contents need here be given.

But it may be permitted to glance at a few salient features of the old church law and practice, noteworthy either as outstanding characteristics of old church life, or as facts about our past history too apt to be overlooked or misapprehended, and to ask what elements in the Statutes go furthest to explain why, after a career of three hundred and thirty-five years, the collapse of the Provincial Council was so tragically sudden and final.



The Statutes mark the sharp contrast between the mediæval and the modern church ; at the same time they prove plainly enough that some faults of race and temperament are persistent. Some of the more unlovely aspects of Presbyterian church life were at least as conspicuous during the ages of faith. On the other hand, many of the enactments reflect abuses which happily recent centuries have not seen in any like degree in churches Protestant or Catholic, Established or Secession. As a whole the Statutes cast a vivid light on mediæval and pre-Reformation conditions, even if we duly remember how difficult it is discreetly to use penal codes and disciplinary regulations as a key to the religious ideals and moral character of a past age. The statutes of the old Scottish church cannot be held, any more than can kirk session minutes or reports of Assembly 'cases' in the later church, visibly to display the progress of God's kingdom amongst men, or tell us comprehensively how the church was seeking to do God's work in the world.

But they give very pregnant hints, and of them at least it cannot be said, 'An enemy hath done this.' The corporate and definite deliverances of the bishops and select representatives of the old Scottish church stand on quite a different footing from, say, the findings of alien inquisitors appointed to discover scandals and justify spoliation or royal appropriation ; they are sure to keep within the mark when, sore against their will, they criticise themselves, their brethren, or their flocks ; and we must accept them, so far as they go, with a confidence it would be unfair to extend to the Rabelaisian jests of Lyndsay against clerical incontinence, the Erasmanian sneers of Buchanan at monkish ignorance and hypocrisy, or Knox's unkind allusions to the priests of Baal, which so many nowadays dismiss without more ado as grotesque and unchristian misrepresentations or exaggerations.

The Statutes frequently testify to an amazing lack of reverence, on the part of priests and people, for the house of God, the rites of religion, the churchyard, the vessels and appointments of the sanctuary. This defect in the Scottish temper must have made itself apparent from the very foundation of Roman order in Scotland. Even of the first dozen Statutes in our code, several lay down rules that should be needless amongst clergy or laity of Christian habits and reverential spirit. The enactment that the sacraments of the church should be celebrated with devout solemnity (4) was too evidently not superfluous. The sacred offices were, it seems, wont to be profaned by being performed in unconsecrated buildings; they were even celebrated in utterly dishonourable places defiled by brute beasts and polluted by other abominations (6). It was necessary to issue an edict—to which little attention seems to have been paid—that churches should be provided with the proper books, vessels, and ornaments; deficiencies were to be made good out of a dead priest's belongings if he failed in his duty on this head (5, 64). Frequent insistence on the propriety of keeping pyxes, burses, and vestments clean (59, 61, 117, etc.) raise an uncomfortable presumption, confirmed by Statute 63, which pointedly reprobates a nastiness in sacred things—evidently too familiar—which would be disgraceful in profane things, and explicitly laments that some priests were, by reason of the dirtiness of their vestments and the appointments of the altar itself, so reprehensible as to make themselves objects of horror to pious worshippers. Again and again officiants have to be warned against celebrating with sour or mouldy wine. Neither priests nor people could be trusted to keep churches tidy or in proper condition; provision had to be made for churches allowed to become positively dilapidated and ruinous; and the priest was

to be held responsible if the chancel was too grossly neglected. As in the thirteenth century, so in Archbishop Forman's time at St. Andrews in the sixteenth, the clergy had to be compelled, under pain of loss of their revenues and deprivation, to repair, rebuild, and cause furnish the churches with the necessary ornaments of the altar (p. 263). The necessity of having churchyards decently enclosed had to be enforced (68, 109), and the unseemliness of allowing brute beasts to wander at will over the graves required to be brought home to the faithful. It would even seem that clergy who put their cattle to pasture in the churchyards were specially aimed at in this prescription (109, note). The church seems indeed too often to have served as the public hall of the parishioners, as the churchyard was the most convenient place for popular or festive gatherings. A twentieth-century Presbyterian may well be startled to find that measures had to be taken to prevent low and disreputable pastimes in thirteenth-century churches and churchyards (68); wrestlings and sports were apparently not the most unseemly exercises indulged in within and around the sacred buildings (76). So in the sixteenth century we find profane carols and wanton songs in the kirk a common form of Sabbath desecration.<sup>1</sup> In 1516-21 even archdeacons and abbots, as well as rectors and chaplains, required to be constrained, under pain of major excommunication, to forbear indecent words, unseemly gestures, and noisy irreverence during the proceedings of the sacred synods (pp. 260-1). And people who selected churchyards for their dances could hardly be expected to have scruples against utilising the sacred buildings for secular business meetings or conducting judicial proceedings in churches even when life and limb were involved. Rightly understood, the most astounding precautionary precept is (in 108) that superaltars are to be kept in seemly condition. It is taken directly from Bishop Grosseteste's *Constitutions*, which

<sup>1</sup> Hamilton's Catechism, Law's edition, p. 68.

on this point follow almost verbatim the questions his predecessor, Hugh de Wells, instructed his archdeacons regularly to put on their yearly visitations; both plainly proving that in the great English diocese of Lincoln the authorities had to take special pains to prevent the specifically consecrated part of the altars of churches from being employed as convenient slabs for grinding paint on, and other such base or domestic uses. The inhabitants of the Scottish diocese or dioceses for whose use Grosseteste's *Constitutions* were borrowed were, it would appear, not more reverent than their contemporaries in the Lincoln diocese who thus flagrantly defied the most rudimentary principles of religious decorum, reverence, and awe.

Ordinary Scottish houses in the Middle Ages seem to have been exceptionally squalid, though wealthy and luxurious lords, spiritual and temporal, built palatial castles. So though richer bishops and abbots who loved architectural magnificence (an unchristian ambition or luxury, in St. Bernard's eyes) erected noble fanes, the ordinary Scottish parish churches were small and very plain single or double oblong chambers. Even these it was found difficult to get decently kept. The manses we may well believe on the authority of Statute 142 to have been very mean; but modern Scottish heritors would stand aghast at an edict commanding arrangements forthwith to be made for rebuilding the manses, not that the priests might year in year out have Christianlike habitations to live in, but that the bishop might be entertained therein on his periodical visitations, in accordance with his notions of comfort.

If some of the churches and of those that ministered in them were so ill-kept and dirty as to demand inquisitorial and peremptory conciliar intervention, it may well be suspected that the average church would hardly have met modern requirements. But from general report as to the ways of mediæval Scots, we are encouraged to believe that those of the laity likely to be shocked by the slovenliness of their clergy would be



but a small minority. The condition of the churches may not actually have hindered the growth of a more critical temper in this department; but, after a study of the Statutes, he would be a bold man who would assume *simpliciter* and insist, as Mr. Lang, for example, assumes and insists, that throughout feudal Scotland 'the ancient church provided an education in things beautiful—architecture, music, sculpture, painting, vestments—of a kind from which Scotland has long been divorced.'<sup>1</sup>

If churches in Scotland were untidy and the appointments of the ministrant and altar even worse, it should be remembered that these blemishes were in those centuries not peculiar to Scotland. Some at least of the statutory prescriptions imposed were, as we have seen, adopted or adapted from English regulations to the same effect. From the *Mirror of Perfection* we learn that in Italy St. Francis used to carry with him a broom to sweep dirty churches; and the veridical and singularly specific autobiographical chronicle of Salimbene gives, under the year 1250, a perfect Italian parallel to the defective arrangements for cleanliness shown by our Statutes to have obtained in some Scottish churches. Speaking of Italian parish priests, he says: 'And many other foul things they do and horrible to be told, which I pass over for brevity's sake. They keep their missals, corporals, and church ornaments in an indecent state—coarse, black, and stained: tiny chalices of tarnished pewter; rough country wine, or vinegar, for the Mass. . . . Many women have better shoe-bands than the cincture, stole, and maniple of many priests, as I have seen with mine own eyes. One day when a Franciscan priest had to celebrate Mass in a certain priest's church on a feast day, he had no stole but the girdle of the priest's concubine.' Friars slept in church during service, or walked about the building gossiping even in time of Mass, and laughed aloud

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<sup>1</sup> *History of Scotland*, vol. i. p. 157.

if moved that way—especially, for example, at any blunder on the part of those who were conducting the service.<sup>1</sup>

Meanwhile the standard of life for churchmen was, theoretically at least, ultra-puritanical. From the days when Roman priests first reproached the Iona monks in Northumbria for displaying the tonsure of Simon Magus down to those of the Roundheads, British Christians found rich matter for discussion and ecclesiastical strife as to the most Christian way of wearing and cutting men's hair. In the four centuries partly covered by our Statutes, the church authorities and their subject clergy seem never to have been able to agree as to what was and what was not a 'seemly' tonsure; bishops and synods insisting on 'large and seemly tonsures,' with the hair elsewhere cropped short (*passim*), while to some at least of the clergy the smaller tonsures were the seemlier, and dangling lovelocks did not seem out of place (p. 269). The earlier Scottish prescriptions closely followed those of English councils in this regard; and we may assume that archdeacons in Scotland were empowered and enjoined, as were those of England by the great council of London in 1175, to crop the hair of recalcitrants even against their will with their own venerable hands<sup>2</sup>—a procedure which others than the victims must have thought even more unseemly than the spectacle of a longish-haired priest.

The natural predilection of thirteenth-century ecclesiastics for gay and gallant raiment, in the height of the fashion as to cut and colour, had to be sternly repressed; the red or green or striped fabrics to which they were prone were forbidden at the very outset of the synodical legislation (10). They may have had reasons other than court fashion for inclining to wear the long knives called 'hangaris,' which were forbidden

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<sup>1</sup> See the *Cronica Fratris Salimbene* in the Parma edition of 1857; or as edited by Holder-Egger for the *Mon. Germ. Hist.* (1905-7); abridged and translated in Coulton's *From St. Francis to Dante* (1906).

<sup>2</sup> The second canon of the Council of London in 1175 begins: *Clerici qui comam nutriunt ab archidiacono etiam inviti tondeantur.*

by Statute 152, and the corslets they were addicted to centuries later (p. 270); it is not reported of them, as of the Celtic saints of old (see p. xxiii) that they came to church councils fully armed, and as joyously ready to slay as to be slain for the faith that was in them, but in 1216 it was found difficult to keep the clergy from accepting challenges to mortal combat (p. 293 and note). Priests were to abstain from all appearance of evil. They were neither to tipple themselves, haunt the society of tipplers, nor be seen within the doors of an inn unless on a journey (63, 113). On no account might they be present at any kind of play-acting (108). Games of chance were as strictly forbidden as they could have been by Seceders (108, 113). If in loose or riotous company clergymen sustained bodily injury, the church was not to support any claim for damages (113).

Yet Bishop David of St. Andrews, in the thirteenth century, found it difficult to eradicate Simoniacal corruption from his priesthood, though he did his best (119): more than one statute declares or implies that some clergy practically sold the sacraments for money, and holding the body of Christ in their hands said, like Judas, 'What will ye give me, and I will deliver him to you?' (77). They had come to demand as a right what the people had been wont to give and were only willing to bestow as a free gift. The painfully numerous, precise, and inquisitorial arrangements as to tithes from all and sundry, not omitting even day labourers at wages of 6s. 8d. per annum, argue unseemly controversies between priests and people from the very beginnings of an organised church (34, 42); and the mortuaries relaxed as extortionate and cruel to the poor in the sixteenth century were exigible to the utmost penny by statute in the thirteenth (88).

In Scotland it is notorious that an unusually large number of parishes lost all benefit of parochial endowments through the livings being appropriated by the monasteries, the church duties being performed—often, it appears, perfunctorily—by

ill-qualified vicars or chaplains on wholly inadequate pittances. This gave rise to numerous regulative measures: so did the persistent defiance by many clergy of church rules as to residence in their parishes and the performance of their functions—for which they were again and again enjoined to qualify themselves. Abbeys were conferred on utterly unfit persons, ‘quha levit courtlyke, secularlye, and voluptuouslye,’ as the Bishop of Ross said; preaching became a lost art for most bishops and clergy; and itinerant preachers had to be provided to supply the lack of those who were too old or otherwise unfit to acquire the unfamiliar accomplishment. Abbots and priors, provosts and deans, had ceased to pay over to the poor the alms to which they were entitled by the deeds of foundation (217, 246), and had to be stimulated to common honesty and Christian charity by Acts of Synod.

## VIII

The old Scottish church might almost be said to have been founded in excommunication; it was apparently in consequence of his having been solemnly excommunicated by the church of his fathers that St. Columba, by way of penance, sought a retreat in the lonely sea-girt ‘Iouan island’; and in Icolmkill one of his first acts of ecclesiastical authority was to deny the jurisdiction and repudiate the orders of the two bishops—presumably of the church of the southern Picts, founded by St. Ninian—who came to investigate his mission and claim his canonical obedience.<sup>1</sup>

The two formulas of excommunication, vernacular and Latin, printed by Dr. Robertson at the head of the *Statuta*, are characteristic examples in this kind; and in the Statutes themselves are several briefer forms or directions<sup>2</sup> for the

<sup>1</sup> See the old Irish life of Columba, as translated in Skene’s *Celtic Scotland*, vol. ii. p. 491.

<sup>2</sup> See Statutes 47, 51, 52, 69, 163.

statutory cursing four times a year. The longer forms may profitably be compared with that 'deep, irrevocable, all-comprehending Ernulphus curse' which (as given in *Tristram Shandy*, Bk. III. chap xi., where Latin text and translation are reproduced with a scrupulous exactitude hardly to be looked for in such a connection) moved Uncle Toby to exclaim, 'Our men swore terribly in Flanders, but nothing to this!' and had such a fascination for Carlyle that again and again in his works and letters 'Ernulphus-cursing,' 'the curse of Ernulphus,' or 'swear like an Ernulphus,' recurs as a *vox signata*; attributing to the excellent twelfth-century Bishop of Rochester a too unique pre-eminency in this art. For the greater curse of the *Textus Roffensis* (printed from the manuscript in 1687 by Spelman in his *Glossarium Archaeologicum*, p. 206) is only one of many British models, closely corresponds with our formulas in plan and substance, and was not even 'writ by Ernulphus the bishop,' but is to be referred to the period 'c. 900-1100.'<sup>1</sup> Had he known it, our homelier native versions, grown from the same stock and containing so many of the same sonorous phrases, as impressive and expressive in the native Doric as in the original Latin, would have served Carlyle's purpose equally well. At least as appalling, and in some respects even more comprehensive, is the 'terrible cursing' in Scots of Gavin Dunbar, Archbishop of Glasgow, which in 1525, at Wolsey's request, his agent Magnus 'procured to be executed in every notable place in the Bordours of Scotland,' and of which Magnus forwarded his master a *vera copia*. Levelled against border reivers and thieves, it was to be fulminated in the vulgar tongue 'that laymen and the illiterate may the more easily understand it, and be smitten with the greater terror.' On the same general plan as the formulas in our volume, it inflicts many curses not

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<sup>1</sup> See the critical notes on it and twelve other formulas in Liebermann's *Gesetze der Angelsachsen*, 1903, vol. i. pp. 432-41.



included in them; introduces local colour, for example, by wishing that the river Tweed may drown the reivers as the Red Sea did the Egyptians; and with Dathan, Abiram, and Nero associates Pharaoh, Holofernes, Judas, 'Pylot,' Simon Magus, Julian the Apostate, and some other 'cruell tyrannis' not quite easy to identify.<sup>1</sup> A study of the Statutes and appended documents rather tends to justify the complaint in popular as well as satirical and controversial Scottish literature, in the *Three Priests of Peblis*, as well as in Lyndsay and Knox, that 'warying' or excommunication had come to be the main occupation of the Scottish clergy before the Reformation. Maister Johne, in the *Three Priests*, makes the king demand of his prelates why in old time bishops and men of kirk did good works, were instant in prayer, and 'to sick folks and in sairness were mendis and medecyne':—

' And quhairfoir now in your time ye warie;  
As thai did than quhairfoir sa may not ye?  
Quhairfoir may not ye do as thay did than?  
Declair me now this questioun if ye can.'

The preaching friar's story of the spurtill in Knox<sup>2</sup> is more than once suggested by the fulmination of the extreme spiritual censure for small errors of omission; and the permutations and combinations, reduplications and reinforcements of varying, were, one fears, more likely to bring the institution into contempt with all and sundry than to be a terror to evil-doers.

Few of the numerous excommunicatory documents are more entertaining than that by which Cardinal Beaton proposed, courteously but very firmly, to invite and persuade, and at need compel, Archbishop Dunbar of Glasgow to come in to the Provincial Council in St. Andrews (pp. 252-9).

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<sup>1</sup> The Scottish text and accompanying archiepiscopal documents in Latin are printed in full in *State Papers of Henry VIII.*, vol. iv. part iv. (1836), pp. 417-19.

<sup>2</sup> Laing's edition of Knox's *History*, vol. i. p. 38.

The jealousy of St. Andrews was still rife down to the fall of the church : the metropolitan of the province of Glasgow, which claimed to have been an episcopal see more than three hundred years before St. Andrews had a bishop, found it hard to obey the primatial and metropolitan monition to attend a provincial council outwith his own province. And not without some reason Beaton suspected he might (which God forbid !) harden his heart, like Pharaoh of old, and decline the pressing invitation. Hence that amazing series of progressively aggravated and re-aggravated penalties prepared, in event of non-compliance, for the brother archbishop, which, having debarred him from entering his own church, progresses by way of triply ‘aggravated’ excommunication—the successively cumulating penalties being iterated and reiterated, as in a nursery rhyme, at every new stage ; until the whole culminates in the dreadful interdict to be inflicted on any village or house that might have given an hour’s shelter or supply to the recalcitrant brother of Glasgow, by this time supposed to have been excommunicated with doubly and triply appalling and eternal consequences. Cardinal Beaton had no such scruples as weighed with a pope or antipope in extremities, Peter de Luna, who as Benedict XIII. sanctioned the foundation of Beaton’s own university and Alma Mater. For when France also turned against the unfortunate Benedict, he gave no ear to those who would have had him interdict the faithless country, and sternly refused to profane the censures of the church in his own quarrel by punishing the ignorant, the poor, and the helpless for wrongs done to himself or his office by their rulers.

The clergy seem not to have been unduly affrayed by the curses they had so frequently to inflict or undergo, and, for the worst spiritual terrors, less noble but more effective pecuniary mulcts had sometimes to be substituted (113, 143). Undue familiarity with official cursings seems to have bred, both in cursers and in cursed, callousness if not contempt ;

neither Beaton nor Dunbar believed that refusal by one to attend a council in the other's province involved eternal death. And it may be argued that to this cause, partly at least, was due the prevalence amongst clergy and laity in Scotland of peculiarly gruesome profanity and blasphemy in social converse or debate.

None of the *Statuta* preserved deals directly with profane swearing in the case either of laity or clergy. Recourse had apparently to be had for this purpose to the secular arm of Parliament, which, in the February session of 1551-2, enacted that 'because notwithstanding the oft and frequent preachings in detestatioun of the grevous and abominabill aithis, sweiring, execratiounis, and blasphematioun of the name of God, sweirand in vane be his precious blude, body, passioun, and woundis; devill stick, cummer [destroy], gor [gore, stab], roist [roast], ryfe [rive] thame, and sic uthers ugsume [disgusting] aithis and execratiounis,' the detestable practice is becoming more and more universal amongst all classes; therefore in the next three months every prelate of the kirk, earl, or lord shall for every such disgusting oath or execration be fined xij d.; every baron or ecclesiastical dignitary of less rank, iij d.; every freeholder and 'small beneficit' clergyman, ij d.; every craftsman, yeoman, or servant, i d.—quite impecunious persons being put in the stocks or imprisoned; the fine to be increased every three months, till next year every prelate or earl was to be fined four shillings for his first oath, eight for his second, and sixteen for his third, lesser laymen and clerics in due proportion, and for the fourth to be banished or imprisoned for a year and a day. In like manner it was provided by an act of the same Parliament that prelates, earls, and lords who made perturbation 'in the kirk in the tyme of divine service and preaching' should be fined £20, while lesser barons and church dignitaries got off with a fine of £5 for their discreditable irreverence. It was with the advice and assent of the Lords Spiritual that this solemnising

enactment was put on the statute-book; but the more unspiritual lords may well have thought that in the impartial phrasing of the Act they rather scored against the Spirituality.

## IX

But, according to the frank and trenchant prologue to the proceedings of the great Provincial Council of 1549, the special failings of the Scottish clergy were the corruption of morals and profane lewdness of life in churchmen of all ranks, together with crass ignorance of literature and of all the liberal arts (p. 84). And the fathers of the Scottish church certainly did themselves and their brethren great injustice if these two lamentable defects were not rank and rampant throughout the whole church. So great and grievous were they that to them mainly the Council attributed the dissensions and occasions of heresy that afflicted the church in that time of revolutionary upheaval. And in Statute 203 they expressly say of 'curates of parish churches or ministers performing the pastoral duties' that 'very many of them throughout the whole realm of Scotland are discovered to be so very deficient as well in learning, morals, and discretion as in other qualifications requisite for that office,' that a comprehensive system of examinations was at once—but too late!—to be set in motion. Nor do the statutes make it probable that the Scottish clergy had ever as a class been well educated.

Several of the earlier statutes suggest that the unqualified priests, who were certainly too common, were ignorant and ill-educated (136); fourteenth-century priests in the diocese of St. Andrews who could not read and understand the synodal decrees were to be fined (140).

The repeated warning about the necessity of having the sacraments celebrated in the precise form handed down (4), and that the canon of the mass must be accurate (108), are probably levelled rather against illiteracy than against the

risk of heresy. Bad Latin was an old weakness of Scotie clergy. Scotie St. Virgilius or Fergil of Salzburg expressly maintained against (English) St. Boniface the validity of baptism administered by a priest ignorant enough to utter the vocables : *Baptizo te in nomine patria et filia et spiritu sancta*. But though taken by themselves our Statutes down to the middle of the sixteenth century provide no means for gauging the educational standard of the Scottish church, the great English councils of Oxford in 1222 and London in 1237, from which so many of the Scottish statutes were directly borrowed, do afford a criterion. It may be safely assumed that in half-savage Scotland, without universities of her own or any organised system of education, the educational level before, during, and after the desolation and confusion of the war of independence was not above that of comparatively peaceful and civilised England. Scotland in the thirteenth century was painfully following the lead of England on the way to reform ; and in England the minimum of Latinity exigible from priests was but a miserable smattering.

The twenty-third canon of the Council of Oxford in 1222 enjoined archdeacons to see to it that priests could properly pronounce at least the words of the canon of the mass and the baptismal formula, and have an intelligent notion of what they meant.<sup>1</sup> The twenty-second canon of the London Council of 1237 imposed on the archdeacons the duty of diligently instructing the priests up to this very modest standard—‘*ut bene sciant et sane intelligent verba canonis et baptismi*.’ And that we are not straining the meaning of these Statutes is plain from the Salisbury registers of the year 1222, in Bishop Poore’s time. The *Register of St. Osmund*<sup>2</sup> records the questions and answers at one archdeacon’s visitation, when five priests of from four to five years’ standing could not parse or explain the very

<sup>1</sup> *Et quod sacerdotes rite proferre noverint saltem verba canonis et baptismatis et quod in hac parte sanum habeant intellectum.*

<sup>2</sup> Rolls Series, 1883-4, vol. i. pp. 304-6.



first words of the canon of the mass; one did not know the meaning of *clemens* in *clementissime pater*. Nor were these curious specimens of the learned profession *par excellence* even temporarily suspended from office.

If such depths of ignorance could be sounded in Salisbury, no wonder that the blankest obtuseness to sound and sense of the Latin tongue should be even commoner in the north—the tongue not merely of Bible and Breviary, but of all learning human and divine. We thank Bishop Hugh de Wells (died 1235), Grosseteste's predecessor at Lincoln, for teaching us the fitting word. To help his archdeacons in carrying out year by year the provisions of the Oxford Council already cited, he formulated fifty *inquisitiones* in respect of the clergy and churches (printed by Wilkins and by Labbé and Cossaert), of which the first—and presumably the most urgent—was *An aliqui . . . sint enormiter illiterati?* If in England in the thirteenth century it sufficed that a priest should know about as much Latin as English musical ladies did of Italian in the early Victorian period, in Scotland priests could hardly be required to do more than show that they could pronounce and perhaps parse the words in the essential parts of the eucharistic and baptismal services. A mediæval candidate for orders could evidently not be expected to read *ad aperturam libri* the simplest book in Latin, or follow intelligently the lessons and epistles, the prayers and excommunications, so constantly re-echoed in his hearing or recited by himself.

However the northern may have stood to the southern church as regards education in the earlier centuries, the sentence passed on the Scottish clergy by their own brethren and superiors in 1549 was portentous beyond anything recorded in contemporary England. The ignorance of the thirteenth century had in Scotland been untouched by the centuries of humanism and renaissance that had come and gone. The most captious critic, the most virulent satirist, could not have said worse of the Scottish churchmen's learning than

by charging them with 'crass ignorance of literature and all the liberal arts.'

How baseless is the dream of the Scottish monasteries having been in a rude and illiterate age the peculiar home of letters and learning, where early and late the brethren sat poring over or copying venerable tomes, is evident not only from the terms of the prologue to the council, but from Statute 198, which is designed to tincture the monasteries with a small modicum of liberal education. It expresses the aspiration that at some future date learned and eloquent preachers might go forth from the monasteries as of old. To that end it was enacted that from each of the monasteries one or, in the case of the larger ones, two brethren should be sent to the university—but only 'from amongst those having a special aptitude for literary studies and good natural abilities.' The majority were perhaps as hopeless as the elderly clergy, who had never preached and were no longer capable of being taught (195)—apparently from all we hear a large proportion.

Lyndsay speaks of 'Sir John Latinless' as a very intelligible epithet for the average clergyman, and in the *Monarchie* (ll. 608-13) dwells on it as matter for

'dirisioun :

To heir thir Nunnis and Systeris nycht and day  
Syngand and sayand Psalmes and Orisoun,  
Nocht understanding what thay syng nor say  
But lyke ane Stirlyng or ane Papingay,  
Quhilk leirnit ar to speik be lang usage.'

Gross ignorance of Latin was not the most signal or characteristic instance of the illiteracy of the Scottish priesthood. From Statute 253, it appears that 'Sir John Latinless,' unless his lessons were carefully got up and rehearsed, could not be counted on to read a simple prose text in his mother tongue without such stumbling and stammering as to evoke the jeers of an average congregation of Scottish worshippers! The

Catechism of 1552 was couched in the simplest style and in the plainest vernacular; yet no rector or vicar or curate is to venture on the reading of the prescribed passage of the Catechism from his own pulpit without constant, frequent, and daily rehearsal of the lessons to be read, lest for his blundering helplessness he incur the ridicule of his hearers—and the curse of God in addition.

No wonder that good Catholic, Archibald Hay, afterwards Principal of St. Mary's College at St. Andrews, complained in 1540 to Cardinal Beaton that bishops ordained men to handle the body of Christ who did not know the alphabet. And we know from Major<sup>1</sup> that another point in which the church of Scotland fell far behind that of England was that bishops admitted to orders men ignorant of the rudiments of sacred music.

When the lords and minor barons, in drawing up the articles at pp. 156-60, demanded that the common prayers and litanies might be said morning and evening in our vulgar 'tounge' (p. 158), they had probably in view not only the edification of the laity, but the relief of the unhappy clergy from the ignominy of saying prayers by rote, in a language they did not understand. They also demanded that a declaration about the sacrament should be set forth in the 'Inglis tounge' (p. 157); and the exhortation prepared to meet their wishes was drawn up in vernacular Scots. The Catechism was written in 'our vulgar Scottish tongue' (p. 144), but the translation of the Pater Noster in it (Law's edition, p. 249) is headed as 'In Inglis.' Only since the embitterment between England and Scotland had become keen about the time of Flodden had any lowlander condescended to call his native language Scottis or Scots—a word till then understood to mean Erse or Gaelic. By the middle of the century *Inglis* and *Scottis* were used interchangeably of 'the vulgar tounge' of

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<sup>1</sup> *Greater Britain*, trans., p. 30, Scot. Hist. Soc.

the lowland Scots, as we have seen. And it is rather pathetic that the Roman Catholic church, which from the first had identified itself with the English-speaking element in the population (56, note), and after the Reformation was to pride itself on its adhesion to the 'auld plane Scottis,' as contrasted with the 'Southeroun' into which the Protestants fell, should have lost the right to speak in the name of the nation just about the time it became customary to speak of the national tongue as Scottis.

The Statutes' account of the ignorance of the clergy both in respect of Latin and the vernacular goes far to render probable the story of William Buchanan in his *Historical Enquiry*<sup>1</sup> of a charter signed for monks of Paisley by a notary because they could not write. The priory of Lesmahagow was a cell of the rich abbey of Kelso; and in 1556 we find its *camerarius* or chamberlain—presumably a lay brother—reporting at length to the abbot at Kelso on the income and outlays of the priory, but signing his name 'with my hand led at the pen' by a notary public.<sup>2</sup> And we know that in 1544 the prioress, the prioress elect, and the twenty nuns of the convent at North Berwick signed a charter with their hands at the pen, because they could not write.<sup>3</sup>

The council of 1549 was, as we have seen, painfully conscious of the illiteracy of the clergy, and anxious, as far as in it lay, to put an end to the scandalous condition of things. By the irony of history, its members have quite ultroneously and in all innocence left on record a curious indication that both in knowledge of the Latin school classics and of the great mediæval church teachers they were themselves somewhat

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<sup>1</sup> In *Miscellanea Scotica*, vol. iv. (1820), p. 213.

<sup>2</sup> In the *Liber S. Marie de Calchou*, vol. ii. pp. 475-85 (Bannatyne Club, 1846).

<sup>3</sup> See the *Carte Monialium de Northberwic* (Bannatyne Club), p. 60, and Dr. Hay Fleming's note in the *Register of the Kirk-Session of St. Andrews*, vol. i. p. 56.

sadly to seek. One of their own statutes sheds at least an unexpected light on the limitations to the collective learning of our sixteenth-century churchmen. By a needless quotation we see that the most reverend and reverend archbishop, bishops, abbots, and church doctors, so much concerned about the 'crass ignorance' of their subordinates, were themselves capable of blundering into a 'howler,' against which they would have been guarded by a little learning or a little labour. By Statute 180 prelates and all ecclesiastics are exhorted to be less gay in their apparel than heretofore, and are to remember 'illius versiculi Divi Bernardi: Dicite pontifices in freno quid facit aurum.' Dr. Robertson follows the copyists in giving *discite*. We shall assume that the members of council understood *dicite*, which the sense obviously demands; but they manifestly thought the hexameter was Bernard's own sentiment and composition. Alas for their lack of ordinary Scottish caution! The 'verse of St. Bernard's' is simply a line (l. 69) from the second satire of Persius, adapted by the change of a single word to suit Bernard's purpose. Now since Bernard expressly introduced it as a well-known classical quotation (*illud tantum gentilicum*, 'a mere heathen observation'), it seems obvious that the fathers took the line from one of several books of *Flores* or collections of extracts from St. Bernard. Thus, in the *Flores* included in the 1632 Paris folio edition of the *Opera*, one purple passage begins: *Clamat penuria pauperum, clamant nudi, clamant famelici, conqueruntur et dicunt: Dicite, pontifices, in fraeno quid facit aurum*, without the introductory context. But if they had only verified their quotation by looking up the extract in its original connection, they would have found Bernard arguing with the Archbishop of Sens (in an *epistola* numbered xlii. in some collected editions, but by Mabillon printed on account of its importance as a *Tractatus de Vita et Moribus Episcoporum*) thus: 'Why should I be silent? . . . What if some one bolder than I should hurl against you, not something from the epistles, as I do, or from the gospels, or



the prophets, or even from the church fathers, *sed tantum illud gentilicum*: "*Dicite, pontifices*,"—*non quidem "in sancto" sed "in fraeno quid facit aurum"?*" The passage from Persius, satirising senseless forms of will-worship suggested by poor carnal human nature, seems to have been a favourite with St. Bernard, who rings the changes on it in a somewhat similar manner in his famous *Apologia*, addressed (about the same date of 1126 or 1127) to William Abbot of St. Thierry, and, impeaching the luxury of the Cluniac monks in life, dress, and architecture, exclaims: 'But I a monk ask other monks what a pagan took exception to in pagans: "*Dicite* [says he], *pontifices, in sancto quid facit aurum*." But I say, "*Dicite pauperes*"—for I am not taking account of the verse [as verse], but of the sense of it: "*Dicite*," I say, "*pauperes*"—if ye indeed are poor—"in sancto quid facit aurum."'

The erroneous attribution is eminently noteworthy, as it shows that our statute-makers were but little at home in the Latin classics, and also that none of them knew either of two quite notable works of one of the very greatest and holiest and most popular of the doctors of the mediæval church. It is especially singular when, after deploring ecclesiastical ignorance, they were making a quotation in what was intended to be a permanent law for a church and a nation, that they should have been content in this blind, careless, happy-go-lucky manner to excerpt what they thought to be St. Bernard's own words from a book of elegant extracts, and that not one of them had the curiosity to look up the passage in its proper context (which must surely have been easily accessible), especially as the hexameter from Persius has no resemblance to the verses St. Bernard actually did write.

By a kind of fatality the only quotation made by the same Scottish Fathers from Bonaventura (in Statute 181) seems also to be rather a reminiscence from a somewhat earlier contemporary of the Doctor Seraphicus, David ab Augsburg, one of the earliest authors in the Franciscan order in Germany (died

1272), whose works, it should be added, have often, in whole or in part, been attributed to Bonaventura, as they are by Luke Wadding. In the third book of the *De Exterioris et Interioris Hominis Compositione, Processus* vi. cap. xxxiii. (on *Caritas*), David argues a point (in 4) *quia indisciplina famulorum redundat in dedecus dominorum*. The Fathers of the College of St. Bonaventura at Quaracchi, near Florence, who edited this work in 1899 and issued it from their own press (*Ad Claras Aquas*), believe that the only part of it that could possibly be attributed to St. Bonaventura was extant as early as 1240 or 1241, and that Bonaventura wrote nothing of a similar kind before 1257.

The provincial synod of 1551-2, which authorised the use of Hamilton's Catechism, passed so many statutes for the better education of the clergy, and was presumably equally representative of the best scholarship of the church, has also rather gratuitously left us a curious means of gauging the classical culture of its members. For in sanctioning the Catechism, it must be held responsible for the verses prefixed to it, including 'three stanzas of very bad sapphics, *with a false quantity in each stanza*'—so bad indeed that Bishop Wordsworth, in referring to them thus (with the emphasis of these italics) in his article on Hamilton's Catechism in the *Scottish Church Review* for 1885 (p. 42), admitted that they gave him a prejudice against the Catechism itself and its compilers which he did not get over for a quarter of a century. Of this prejudice he was still conscious when he wrote that article, and he even apologised for it as not unnatural in an ex-schoolmaster. Scandalised himself, he pathetically exclaims: 'How must George Buchanan, who had been a pupil of Major's at St. Andrews, have been scandalised at such a production emanating from his Alma Mater, and sent forth to the world (as if to challenge, quite unnecessarily, the attention of scholars) with all the prestige of Archiepiscopal, Primatial, Metropolitan, and Conciliar authority!' Major, unable by age and infir-

mity to take part in the synod of 1549, died in 1550, and was accordingly blameless in respect of the deplorable sapphics which so excited the scholarly wrath of the amiable Bishop of St. Andrews; but as Buchanan had formed his judgment of Major's scholarship and flouted his claims to eminence in a famous epigram more than twenty years before, it is hardly likely that one unhappy copy of verses could have increased Buchanan's disrespect for the learning of Major, the Franciscans, or the average churchman of his time. A false quantity or two has been pointed out even in Buchanan's own otherwise brilliant verse.

It is not to be supposed that in Scotland there was a lack of capable and ambitious ecclesiastics, who could have no difficulty in mastering at home or abroad the modicum of mediæval Latin learning required in a churchman, who aspired not so much to a deanery or a bishopric as to the various government appointments open to canonists and civilians, including the high offices of state. In Scotland as much, perhaps, as in any country the service of the church prepared the way for a career of secular ambition; every capable priest (especially if well-born) carried under his biretta a chance of the Chancellorship. Clerical canonists, civilians, and notaries before the Reformation attained, no doubt, to as great proficiency in law Latin as the lay Scots lawyers after it. But the Scottish church was at best eminently unlearned and unproductive. Even its canon law was largely borrowed, in words as well as substance, from the canons of English councils. And not in this department alone was it extraordinarily barren.

The church of Scotland was always numerically a small body compared with that of England—proportionally smaller in the Middle Ages than later. For though the church existed in what was then known as 'savage Scotland,' it bulked little in public life and exercised little real power save in the lowlands and in the Anglicised or lowlandised regions north of the Firth of Forth. Even so, after full allowance is made for

the comparative fewness of the parochial cures, the barrenness of the northern church was prodigious when contrasted with the literary activity of the southern.

If one considers the native energy of the people, and the eminent thinkers and writers Scotland has at various times given to the world, nothing is more remarkable about the mediæval churchmen of Scotland, native or imported, than this one fact. While England was well in the front of the intellectual and philosophical movement in Europe, Scotland was hardly named. Michael Scotus may perhaps have been a Scotsman in our sense of the word. Duns Scotus was apparently a Northumbrian Englishman; and against the Doctor Irrefragibilis, the Doctor Illustris, the Doctor Profundus, the Doctor Mirabilis, the Doctor Invincibilis—all English schoolmen famous throughout Europe, not to speak of such men as Grosseteste and Wycliffe—Scotland has only John Major, who played a part at Paris but at home is better known as historian than as theologian. Against Wyntoun and Fordun, Bower and Boece, Bellenden and Leslie, England can set dozens of historian-chroniclers, of whom William of Malmesbury and Matthew Paris are but instances. Barbour's main achievement was theological neither in tone nor substance, even if the *Legends of the Saints* was his handiwork. In literature proper the two Scottish churchmen who were really eminent were both peculiarly unclerical clergymen and far from being model churchmen. Gavin Douglas, an intriguing and political bishop, was justly said to have studied Virgil much more fruitfully than the Bible or the Fathers, and Dunbar, an accomplished poet, was a type of the ribald priest whom churchmen and moralists and all good Christians detested; who entertained his royal patron with erotic obscenities and blasphemous parodies, yet was disappointed that he did not receive preferment in the church of which Elphinstone was the chiefest ornament.

The most outstanding claim to remembrance as friends of learning established by Bishops Wardlaw, Turnbull, and

Elphinstone was their foundation of the universities of St. Andrews (1411-12), Glasgow (1450-1), and Aberdeen (1494-5) respectively. But we are too apt to forget that there were often reasons for founding universities quite other than mere love of learning, as the building of great cathedrals and castles was not always due to simple piety or love of art. The apparition of three universities within the same century, in a small country that till then had done without even one, should remind us that it was just then that the rivalry of the greater Scottish sees became marked and overt, and that Glasgow and Aberdeen grudged St. Andrews every claim to pre-eminency. Within ten years of the death of Wardlaw, who founded the first Scottish university in his cathedral city, the see of St. Kentigern checkmated this new distinction of St. Andrews, by obtaining the bull which sanctioned a university in Glasgow. When, in 1472, St. Andrews was made a metropolitan see, it was the bishop of Aberdeen who first sought and obtained exemption for his diocese; and in the time of Elphinstone, who founded the northern university, there was a scheme on foot to secure exemption for Aberdeen not merely from the archiepiscopal and metropolitan, but from the primatial and legatine jurisdiction conferred on St. Andrews in 1487. The new-fledged Scottish universities might loftily claim Paris and Bologna as their models, but in fact they corresponded rather to imperfectly equipped Latin schools; even at St. Andrews special buildings were at first non-extant, and for long very inadequate; with the noble name of university, the Glasgow foundation maintained till the Reformation a very feeble and precarious existence. The most ambitious and accomplished clerics continued as before to study, or complete their studies, at foreign universities; and from what we can trace of the influence of the three Scottish universities collectively on the culture of the professional class of the country, they did but little credit to their glorious models.



## x

But by far the most lamentable and irrepressible infirmity of the Scottish clergy was the first of the two shortcomings so candidly admitted in the prologue to the statutes of 1549—‘the corruption of morals and profane lewdness of life in churchmen of all ranks.’ The humiliating confession is supplemented by Statute 203, which puts on record the fact that very many priests and curates throughout the country were notoriously illiterate, immoral, and otherwise disqualified for their sacred office. This grievous moral hindrance to the usefulness of the clergy was one of the first to demand attention at the hands of the earliest councils, and was then pointedly described as ‘that filthy contagion of lustful naughtiness,’ a vice ‘which always shamelessly reintroduces itself,’ and by which ‘the good fame of the church is shamefully discredited’ (18). The prominence and persistence of the mischief may be estimated by the long series of statutes directed against it all through the centuries, down to the synods held just before the old church system disappeared at the Reformation (with 18 cf. 23, 82, 108, 113, 114, and the rest); the various forms the unlawful relations to women took; and the expedients by which the church sought—in vain—to repress the vice, punishing with spiritual and temporal penalties not only the priests but their unhappy paramours and children.

At a time when civilisation was but slowly asserting itself, and ere yet the people were inured to ordinary religious, moral, or social restraints, the clergy were subjected to a rule of life which neither they nor their fathers could bear. The ascetic discipline accepted by the church as the standard of the higher religious life, and from the twelfth century remorselessly imposed on the clergy and religious orders, was a spiritual tyranny in comparison with which the yoke of extremest Puritanism was easy and its burden light. In the centuries with which our statutes deal, celibate chastity was a counsel of

perfection peculiarly unrealisable by too many of the Scottish clergy. The Scots were of strong fibre, but still very coarse in the grain: 'like people like priest' seems to have held good on this side of life and manners.

Some priests kept regular concubines, and even with three months' grace declined to put them 'utterly' away; or having been compelled temporarily to dismiss them, surreptitiously brought them back or proceeded to select new ones. Any eligible *focaria* was assumed to be only a less definitely acknowledged concubine; and dealings with common prostitutes had further to be taken notice of. Priests bought with the church's money lands for their bastard children, and intruded them into churches over which they had authority; and bishops and wealthy clerics openly endowed, out of revenues they received from the church, sons and daughters whom they contrived to ally with baronial families. Such doings were prohibited, and in ingeniously unkind ways discouraged. Both in the earlier and the later centuries, the children of priests were not to be kept in their houses; their concubines (evidently a perfectly recognised section of the community, and in common parlance referred to by a coarser Anglo-Saxon equivalent) were not to receive from any one shelter or hospitality, they were not to have wills made in their favour, they were not to have recourse against priests for any promise of wages or payment made to them, and they were to be debarred from the consolations of religion.

In one statute the fathers, following the council of Basel, employed an argument which contains by implication an apology, at once ludicrous and pathetic, for the incontinence of churchmen. Statute 173 reprobating adultery in laymen calls their attention to the indisputable fact that misbehaviour in this kind was much more reprehensible in the case of those who had (or might have) wives of their own. The fathers apparently forgot that the laymen might, and probably did, retort on their sage monitors that a Roman Catholic

priest or bishop deliberately unfaithful to his vow is not merely an erring brother, but a hypocrite and impostor wholly unfit to assume the role of moral censor, spiritual director, or ecclesiastical legislator.

Worst of all in the eyes of the historical student, anxious not to judge the church of the thirteenth century by the standard of the twentieth century, or even of the first, is the distinct implication that bishops and priests, rectors and vicars, were not free from the guilt of abusing the most solemn sacraments of the church, the church fabric, and the churchyard by indecently and sacrilegiously dishonouring the women who came to them as penitents for confession and absolution. Our Scottish statutes make it painfully clear that Scottish mothers and aunts had the same strong reasons as St. Catherine of Siena had for urgently imploring the girls and women of their kith and kin to fly from their confessors the moment confession was ended. The Scottish clergy required to be reminded by an early council that it is as unpardonable to sin with their spiritual daughters in penance as with their spiritual daughters by baptism (54). The simple statement that a bishop or priest ought not to have connection (*non debet . . . commisceri*) with the woman who came to confession seems a surprisingly mild way of putting it; for a sin hideous enough to call down the special wrath of God as upon Sodom and Gomorrha, twelve years (private) penance in the case of the priest and fifteen years for the bishop can hardly have seemed too severe a penalty to any but the malefactor himself. To the rude and fierce Scottish baron of the period, and the still ruder and fiercer Scottish commoner, whose wife or daughter had been defiled in this way, it must have seemed a miserably inadequate atonement; and one wonders the less that some priests thought it well to carry whingers and wear corslets. The compromising enactment appears in the statutes of the thirteenth century (54), as well as in the three early laws quoted from the

*Decretum* (101, 102, 103). Businesslike arrangements are made as to the incidence of the outlays for 'reconciliation' when church or churchyard has been profaned in this revolting manner, if the guilty rector, vicar, or parishioner respectively does not, being solvent, admit his responsibility and undertake the payment (164). And that this abominable vice was still rife amongst the clergy in the sixteenth century seems to be admitted by the compilers of the Catechism and the synod that sanctioned it, when 'the punitioun of God' that fell deservedly on Hophni and Phinehas for their 'greit wantones and huirdome, abusand the women quhilk came to mak sacrifice' is dwelt on as 'ane special exempil worthi to be notit of al kirkmen.' Verily, such outrages on the name of religion were naturally to be hushed up if possible; only if the matter 'come to the knowledge of the people' are the miscreants who indulged in them to be deposed from the ministry they disgraced (54).

The comprehensive impeachment of the clergy of all ranks for their ignorance and immorality, so humiliating to the clerical order, so ruinous to the prestige of the church, could have been put on record by the Council only under stress of sheer conviction, and as a statement of facts too notorious to be disputed. Many of the old statutes directly lead up to the same conclusions which had at various times and in divers manners been dinned into the ears of the clergy from without. Bishops and abbots had received many pointed warnings that it was high time to set their houses in order. As far back as 1424-5 James I. had used very strong language towards the abbots and priors of the Benedictine and Augustinian orders by way of stimulating their *torpentes animos et sompnolencie sue ignaviam*, which were even then every day getting worse. More recently, James V., who incited Buchanan, nowise backward in the matter, to hold up the mendicants to ignominy in the *Franciscanus*, urged on the Provincial Council in 1536, not without threats, the abolition of the corpse presents and the

upmost cloth; and in his last Parliament (March 14, 1540-1) put it on record that 'the unhonestie and misreule of Kirkmen baith in witt, knowledge and maneris is the mater and caus that the kirk and kirkmen are lichtlyit and contempnit,' and called on archbishops, prelates, and every kirkman in his degree to reform themselves and those who owed them obedience. In private the king dealt even more faithfully with his bishops, threatening them with still sharper treatment than his uncle of England had meted to his.

The Catholic lords and barons in their articles to the queen regent in 1558-9 speak quite comprehensively of the 'opin sclander that is gevin to the haill estates throught the said spirituale men's ungodly and dissolut lyves.' And in the letter despatched to the Pope from Scotland in the same year, in the name of Queen Mary and her husband the dauphin, but apparently written by the queen regent herself, the Pope is reminded that for four years continually Catholic queen and Catholic queen regent had by various channels been calling his attention to *le grand besoing qu'avoient les gens d'Eglise du dict royaume d'une grande et severe Reformacion*, to their neglect of duty, and to *la depravation et corruption de leurs moeurs et façons de vivre, dont les seculiers estoient tellement scandalisez qu'ilz entroient en contempnement et mespris de la Religion et de l'eglise Romaine*; intimating that the much required council for the *prompte et exacte Reformacion en leur clergé* had actually been held *sans ce qu'il en soit reussy aucun fruct, ains plus tost scandalle*.<sup>1</sup> Worse still; even of those who were most conspicuous in condemning and deploring the faults of the weaker brethren, some at least were themselves demonstrably insincere and continued to be culpable and incorrigible in the most scandalous degree.

Than Statute 261, passed by the council of 1558-9, there is surely no more singular example extant of a self-denying

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<sup>1</sup> Hume Brown's *Knox*, vol. ii. pp. 300, 301.



ordinance. Recognising that the clergy might be only too likely to suspect that they, the two archbishops, were hardly entitled by their personal example to insist strictly on perfect chastity in the bishops and inferior clergy, they submit their personal conduct to the inquisition and censure of a strong commission of bishops and eminent theologians.

The archbishops saw that the bishops doubted them, as the bishops were in turn suspected by the inferior clergy, and as the whole spiritual estate was collectively held in the gravest suspicion by the laity. We know not what action the Commission with such delicate powers actually took. The Archbishop of Glasgow seems to have been exceptionally blameless in personal morals. But the Archbishop of St. Andrews, primate, legate, and president of the reformatory councils to boot (himself the illegitimate son of an earl), was probably the most conspicuous and notorious *publicus concubinarium* in the kingdom. From the curiously considerate regimen imposed on him by the great Cardanus in the capacity of medical adviser, we gather that in 1552 chastity, though distinctly the appropriate remedy for his failing health, was frankly scouted by the Most Reverend as wholly out of the question, and so a course of moderate and carefully regulated incontinence was thoughtfully prescribed instead by the confidential adviser.<sup>1</sup> This accommodating advice (recognised in the munificent honorarium of nine hundred golden crowns at the end of the ten weeks' treatment) was tendered a few months after the Second General Provincial Council held by the archbishop for the reformation of clerical morals. Furthermore, by his mistress, the nobly-born Grizel Sempill, he had three children; and of these two were formally legitimated in the same year, the very year in which he solemnly sanctioned the famous Catechism, so unexceptionably correct on the sins forbidden in 'the saxt command' (our seventh). The legitima-

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<sup>1</sup> H. Morley's *Life of Cardan*, vol. ii. pp. 114-22.

tion was naturally required in order that they might, contrary to the canons, inherit his wealth, which was great. If the highest dignitary in the church defied in this cynical way canon law, the decrees of his own councils, and the Catechism issued in his name, not to speak of the pretended submission of his personal morals to the regulations of inquisitors, what value could attach to the promises or the proceedings of such an one and his compeers? Some of the other prelates were as bad or worse. How could lords, barons, or commons be expected to hope for any good from the most solemnly worded edicts passed by councils, however representative and authoritative, of a church so visibly corrupt in head and members? The Most Reverend had, like another Abbot of Unreason, turned his provincial council into a Feast of Fools, and crowned himself and his fellow-actors with fools-caps only too conspicuous in the sight of all the people.<sup>1</sup>

Under the circumstances, nothing seems more probable than that the Council of 1549 was substantially accurate in its interpretation of the prevailing discontents, and in concluding that the greatest scandal to the laity and the largest proportion of the heresy was due to nothing so much as to the ill-regulated lives of the clergy, and the incongruity of persons who were themselves notoriously immoral sitting in moral judgment on others (222), and calmly handing over good men to the civil arm—upon occasion to be burnt to death—for infringement of their arbitrary decrees, while they themselves lived in open defiance of their own vows and of God's law. The Council of 1551-2 was too sanguine in persuading itself that the worst was already over (253), and no doubt greatly underestimated the amount of irreconcilable and aggressive heresy that had sunk deep into the hearts of many both among clergy and laity. Among a thinking minority, German

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<sup>1</sup> According to Knox, the Bishop of Moray appealed against the relevant Statutes (Laing's ed. of the *History*, vol. i. p. 292); and Pittscottie (*Cronicles*, Scot. Text Soc., vol. ii. p. 141) gives the ground of his appeal.

rationalism and the higher criticism of the day were undoubtedly sapping loyalty to tradition. But the Council's deliberate and reiterated finding as to the main cause of the movement that overthrew the Roman Catholic church as by law established, and ultimately established by law something so widely different, ought to be allowed more weight than is generally accorded to it.

## XI

If our Scottish churchmen were right, the Reformation was not, primarily and as far as the mass of the nation was concerned, a rebellion against the Catholic church, against Catholic doctrine, or Catholic rites, but a rising in defence of the holiest Catholic tradition against a crew of worthless ministers who dishonoured their office and the Catholic name. On their own showing, the Scottish bishops and priests had provoked an orthodox and Catholic nation into mutiny, open rebellion, and soul-destroying heresy. Woe unto them through whom the occasion of stumbling came!

If the Council's judgment was well founded, it would account for much in the special character of the insurrection against the old church and of the ultimate reconstitution of the ecclesiastical polity. It would explain why on the fundamental doctrines of the Christian faith there was in Scotland (spite of the heresies scheduled in Statute 225) so little real heresy, free-thinking, or naturalism; why on this side the Reformation was so conservative. It would explain why on another series of subjects, heresy was all but universal, progressive, and irreconcilable—in the conviction that the bishops had proved themselves unfit to be lords over God's heritage, that the credentials of the order were suspect or worse, and that the hierarchical constitution of the church under which so gross evils had flourished was not itself Scriptural or of divine authority. Even now comparatively few

are keenly alive to spiritual interests or regulate their lives by the standard of the Gospel. Then the proportion was certainly not greater. But some regard for decency is all but universal; professional honesty is wont to be judged somewhat strictly; readiness to criticise the privileged classes has never been rare amongst us; and a disposition to resent injury and injustice might always and everywhere be counted on with more confidence than any of the specifically Christian or theological virtues. Neither in the sixteenth nor any other century were a majority of the Scottish people either theological fanatics or self-denying enthusiasts—quite the contrary. Then as now a vast majority were profoundly indifferent to theological problems as such; in 1558 probably very few were thorough evangelicals in the Continental sense. The reik of Master Patrick Hamilton had infected those it had blown on, but comparatively few had drunk of St. Leonard's well; Wishart's preaching in 1545 and Knox's in 1555 had not changed the creed of the nation. An educated minority had accepted the New Light, or at least read the imported Lutheran pamphlets. But justification by faith alone does not seem to have appealed to Scotsmen at large as it did to German Lutherans. The papal supremacy did not up till 1560 infuriate Scotsmen as it did English Catholics; and the Provincial Council of 1549 (216) did not fear exasperating the people by humbly enacting as law for the Scottish Church and nation not only what the Council of Trent had already decreed, but whatever it might thereafter be pleased to decree.

The lords and barons who drew up the 'articles' (pp. 156-160) demanded no change in Catholic dogma, nor did they hint at the Lutheran conception of grace and the gospel; nay, more, they expressly condemned 'deforming or innovating the louable ceremonies and rites . . . usit in Haly Kirk' (p. 160). There was no doubt a steadily increasing body of thoroughgoing Protestants in the country; but at their first 'bond' in December 1557, the Lords of the Congregation and their

followers were comparatively few in numbers. Had the church seriously taken in hand the purification of God's temple from the flagrant scandals admitted to exist, neither Lords nor Commons would probably, then at least, and collectively as representing the nation, have insisted on serious doctrinal or ritual revolution. On one thing, however, Lords and Commons, whether moderates or revolutionaries, were heartily in accord: they were determined that the open sin and shame of the church should cease and determine. But with profligate priests on all hands in place and power, under pressure frankly admitting the grievous charges made against them, and solemnly enacting the necessary reforms while cynically ignoring them in their lives, what wonder if the meekest of men—and the Scots, Catholic or Protestant, were never meek—should have given up all hope of gradual reformation from within, and been prepared for the reinforcement from without of drastic changes which the churchmen could neither resist nor thwart.

'The said spirituale men's lyves' stank in the nostrils of lords and barons not apparently too prudish; as they put it, the spiritual estate refuses to 'emend be ony sic persuasion as hes bene hidertills usit' by provincial councils or statutes synodal, and will not 'condescend to seik reformation of thair lyvis'; it remained to apply such persuasion as had not been hitherto tried—to reform them *ab extra* in a manner not at all contemplated by synods provincial or diocesan. Further, the seinye or bishop's court had come to be popularly regarded as inquisitorial, extortionate, and oppressive. The seinye in the other sense—the council itself—was doubtless held responsible for it, and shared in its unpopularity.

Great church movements in Scotland have rarely or never been purely theological or religious: the people have risen in their might only when they had a great wrong to redress, when they saw themselves driven to maintain their rights and interests against unholy invasion. So at the Second Reforma-



tion, so after the Restoration, so in another way in 1843. In 1558-59 one intolerable grievance united all the laity in the same public cause, including multitudes who had no ill-will to the Mass, and no enthusiasm either for justification or for sanctification as expounded by the new preachers. And serious trouble was to be looked for by 'the said spirituale men.'

## XII

If Catholic councils, Catholic lords and barons, and a Catholic queen regent rightly diagnosed the malady in church and state, we do not, in order to understand the Reformed Kirk, require to assume an inexplicable prejudice or perversity on the part of Scotsmen as a race and nation, a peculiar irreverence for the past, an irrational obtuseness to the historic spirit—rather the contrary indeed. We can see why their first concern in the *nova erectio* of 1560 was to checkmate bishops and put an end to priestly arrogance; why they disregarded the prescriptions and determinations of councils of bishops and monks, and in the new ecclesiastical polity gave free scope to the latent democratic temper of the race, so largely repressed in the sphere of secular politics.

The Scots had never stood much in awe of episcopal authority. Their notorious disregard of œcumenical councils, it should be remembered, was the very reason why the Pope sanctioned annual provincial councils in 1225; they did not evince much interest in the seven general councils that had met between that date and the assembling of the Council of Trent; and they had by no means been too deferential to the edicts of their native synods. Hence it was the less singular that in 1560 a marked difference should be made between the authority of Scripture and that of a church as represented by councils of bishops, discredited as they were by the history of the church in Scotland.

On the view adopted by the Councils of 1549 and 1551-2

it is easily explicable why a movement begun amongst a people most of whom sought only relief from unendurable scandals passed under the control of men steeped in the spirit of Wittenberg or Geneva; how it was that the people gave to the new church leaders, whom they trusted as good men and true, an unhesitating obedience they had long withdrawn from the unreformed clergy, whom they despised; and why the note of bitterness towards bishops, priests, and curates is thenceforward characteristic of Scottish church history. We grasp at once why the reform could not be gentle and gradual if there was so small a sound basis to work on. St. Bernard did not measure his denunciations of erring brethren in his own time: we can easily understand, if not approve, the intemperate language of reformers about ignorant, luxurious and scandalous clergy whom even their own supreme council felt it necessary to hold up to unqualified reprobation and adjure to repentance and reform. And we can comprehend why hatred of bishop and curate became engrained into Scottish bone and marrow, and why so many Scotsmen continued for centuries to regard with indiscriminating dislike and intolerance all who bore those names or assumed to exercise their offices.

When all belief in the apostolic succession, in sacramental grace, and especially in the doctrine of the mass, was utterly renounced, Catholic doctrines believed to be founded on Scripture were in Scotland as elsewhere unhesitatingly retained substantially in the shape they owed to bishops, councils, and schoolmen, and in not a few cases were emphasised in the new church. Trinity and incarnation as defined by the councils of the fourth century, atonement as apprehended by an archbishop of Canterbury, Benedictine and schoolman, were maintained as of old. The doctrine of original sin was taken over precisely as it had been left by Augustine. The doctrine of predestination had been handed on from generation to generation of Scotsmen since Augustinian monks first settled in the country. The works of 'Prosper' were held in esteem at St. Andrews in 1155; and

Prosper of Aquitaine was the champion of 'high' Augustinianism. Bernard of Clairvaux, quoted by the Scottish fathers with reverence, was 'Augustinus Redivivus.' Peter Lombard, whose Sentences were commented on by our own Provost of St. Salvator's, John Major, and cited as a standard authority by the Council of 1549, was distinctly and deliberately predestinarian. Though both the doctrines of election and reprobation are often spoken of as peculiarly puritan or presbyterian, it was not Calvin or Knox, but Thomas Aquinas who first formulated the most repellent statement of divine reprobation, and Aquinas is another of the theologians specially recommended by our Council.

While the powers of bishops and priests were repudiated, the authority of the church, as the kingdom of Christ, was as stoutly maintained as of old; its independence of the state and its supremacy in the spiritual sphere were—in sharp contrast to what happened in England—more fully defined and emphasised. On the practical side, the old church claimed to regulate the lives of the people by divine right; and a study of the Statutes enables us to see how on the whole the intolerance of the seventeenth century was by Scotsmen found so much more endurable than that of the early sixteenth.

Amongst minor branches of doctrine and discipline, the sanctification of the Sabbath and the duty of dealing severely with witches are quite erroneously treated as Presbyterian novelties. The doctrine of the Sunday-Sabbath is Roman Catholic. The sanctification of the Sunday, unknown to the Celtic church, was introduced into Scotland by Margaret and the church of the Roman obedience. James iv. showed a strictness in outward Sabbath observance that he did not extend to the keeping of some of the other Commandments;<sup>1</sup> and the Council of 1551-2, through the Catechism prepared

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<sup>1</sup> Letter of Don Pedro de Ayala in Bergenroth's *Simancas Papers*, vol. i.; translated in Hume Brown's *Early Travellers in Scotland* (see p. 40).

for them, laid down a doctrine of Sabbath-keeping and Sabbath-breaking which, save that other holy days are named beside it, leaves little to be desired by Puritans—from the special significance of the ‘Remember’ prefixed to the Sabbath law alone of all the Commandments to the recognition that Sabbath breaking was a special cause of the ‘calamiteis and great plaigis and misereis’ with which the land was afflicted. No doubt was allowed that the ‘Sabboth day’ was ‘translatit and changit to the Sunday’ without diminishing the duty of faithful observance; and the Catechism reprobrates all ‘occasionis of syn as dansyng, unnecessarie drinking . . . carting and dysing’ with as much energy as could those who most abhor the Continental Sunday. The doctrine that Sunday is the Christian Sabbath, and that the law which regulated the Jewish Sabbath is ‘translatit and changit’ but still binding on Christian consciences is not set forth in the New Testament and is not even an early Christian doctrine, but is the development of the Middle Ages, the work of bishops and doctors of the Catholic Church. Under the Reformers, the recognised Catholic duty of Sabbath keeping was only made a little more stringent.

The baleful powers of witches were fully recognised by Statute 51 and the other chief formulas of excommunication, by which witches male and female were four times a year solemnly consigned to Satan, and in those days the civil arm never hesitated to execute on witches, convicted in ecclesiastical courts, the divine law that said ‘Thou shalt not suffer a witch to live.’ One of the *extravagantes* of Pope John xxii. (1316-34) gave a powerful impetus to the persecution. According to the old fragment printed by Pinkerton (*Hist. of Scot.*, vol. i. p. 503), in 1479 ‘wes mony weches and warlois brint’ at Edinburgh; the case being treated as a *cause célèbre*, not because witches and warlocks were burned to death on occasion, but because there were many of them, and because they practised against the king, and were believed to have the king’s brother as accom-

plice. But the reign of terror throughout Christendom began with the bull of Innocent VIII. in 1484.<sup>1</sup> Our old Catechism affirms that 'without dout all Wytches, Negro-manceris, and siclike workis be operationun of the Devil,' and that neither witches nor those who resort to their aid shall be excused 'fra deidly synne and endles damnation.' It is by a lack of historical perspective that the comparatively small number of executions by the criminal law of Scotland between the Act of 1563 and the last case in 1722 bulk so much more largely in many minds than the thousands sent to their doom in Catholic lands both before and after the Reformation;<sup>2</sup> in some single well-worked Catholic dioceses hundreds seem to have been burned in one or two years; the execution of witches attracting no more attention or debate than that of other felons. Not till after the Reformation did Catholics in rapidly increasing numbers oppose the current beliefs of their co-religionists about witch-burning.<sup>3</sup>

From Statutes 49 and 194 it appears that in Scotland too the zeal of the ill-reputed pardoners had to be kept within bounds; and that as elsewhere the magnificence of the (comparatively few) great churches, such as the cathedral of Glasgow, was indebted to the sale of indulgences. And from several of Forman's Synodal Constitutions we see that the fines exacted from the clergy for personal and official delinquencies, as well as from their parishioners, must have contributed very materially to the upkeep and adornment of the metropolitan church of St. Andrews. It was realised that temporal punishment not exceeding forty shillings Scots might deter from sin priests whom the fear of God, or of excommunication and consignment to eternal death, could not restrain from evil

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<sup>1</sup> See the relevant section of *The Pope and the Council*, by 'Janus' (Döllinger).

<sup>2</sup> See Hay Fleming's *St. Andrews Kirk-Session Register*, vol. ii. p. lxxxi, note (Scot. Hist. Soc.).

<sup>3</sup> See the article 'Witchcraft' in Addis and Arnold's *Catholic Dictionary*.



(113, 143). The principle of 'buttock-maill,'<sup>1</sup> denounced in the eighteenth century as a deplorable and demoralising outcome of kirk-session tyranny, was, though contrary to the canons (see Statute 173), frankly accepted in pre-Reformation Scotland, and both in our ruined and our restored cathedrals we may still admire its economical and æsthetic utilisation.

The old Catholic kirk of Scotland claimed—and exercised—full authority to interfere with, regulate, or utterly interdict popular sports and pastimes, with or without reasons annexed. Even Puritans might be pardoned for objecting, as our ancient church councils objected, to low and indecent pastimes actually carried on in the church, and to wrestling matches in the churchyards. But the church went much further. By sternly forbidding its ministers to be present at any kind of dramatic entertainment, to engage in games of chance, or to enter a tavern save under specified conditions (63, 108, 113), it plainly meant to stigmatise proceedings inconsistent with the higher Christian life. And to all and sundry the church prohibited rough games, involving a struggle for a prize, and so likely to lead to quarrelling and fighting (108). The Feast of Fools, one of the most fascinating of mediæval entertainments, was absolutely forbidden by the same Statute (borrowed from Lincoln in the thirteenth century), but in vain, for in 1555 we find the Three Estates of the Realm, with and by the advice and consent of Archbishop Hamilton and a full contingent of bishops, abbots, and priors, still denouncing penalties against the electing of Abbots of Unreason. We seem here to see the church calling in the secular arm to assist it in the struggle with popular amusements obnoxious to ecclesiastical censure. In the same Act of Parliament it was 'statut and ordainit that in all tymes cumming na maner of person be chosin Robert Hude nor Lytill John, Abbottis of Unresson, Quenis of the Maii,' under severe penalties; the provosts and bailies who allowed

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<sup>1</sup> Lyndsay's *Thrie Estaitis*, line 3370.

such doings were condemned to lose their freedom (*i.e.* citizenship) for five years, and those who permitted themselves to be chosen to such offices to be 'banist furth of the realme' without more ado. And women who impeded traffic in the streets of burghs or landward towns 'about simmer treis singand' (singing around summer trees, apparently another May day ploy) were to be subjected to the degrading punishment of the *cuk-stool*.<sup>1</sup> It was therefore by no means left to the Reformers or Puritans to deal sharply with Robin Hood and other popular pastimes. As pleasure-loving, Catholic Mary Queen of Scots was herself moved to write to the magistrates of Edinburgh, earnestly adjuring them utterly to put an end to the Robin Hood performances,<sup>2</sup> we may be sure that neither the old kirk nor the reformed kirk acted without strong reason when they took action against popular amusements, nor that they ever sought to suppress any favourite sport or entertainment that was in their judgment perfectly innocent in itself and consistent with reverence for divine things. Holiday entertainments seem in Scotland at all times to have been too apt to degenerate into mere orgies of drunkenness and other forms of moral unrestraint even more disastrous to the peace of families and the well-being of the community.

It is noteworthy that the resolutions of the Councils of 1549 and 1551-2 (see 188-190, 240-241) had been anticipated by the bishop and chapter of Aberdeen, when in July 1547 they admitted a 'preaching canon' who was to preach statedly to the people and to give in the cathedral two lectures on theology weekly.<sup>3</sup>

The custom of carrying goods and chattels to a church as a sanctuary where (if the enemy were reasonable!) there

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<sup>1</sup> Thomson's *Acts of Parliament*, vol. ii. p. 500.

<sup>2</sup> Hay Fleming's *Mary Queen of Scots* (1897), pp. 62, 281-3; Hume Brown's *Scotland in the Time of Queen Mary*, pp. 165, 166; *Burgh Records of Edinburgh*, vol. ii. p. 134.

<sup>3</sup> See *Registrum Episcopatus Aberdonensis*, vol. i. p. lix (1845).

was at least a chance of their being kept safe, assumed as common in the translation of Statute 95 (and note), was quite a familiar one in some parts of Scotland both before and after the Reformation. In 1555, in a feud between the MacKays of Strathnaver and the Earl of Sutherland, the Strathnaver men invaded the Sutherland country and ‘burnt the chapel of St. Ninian’s in Navidell, whither the inhabitants of the country, upon this sudden tumult, had conveyed some part of their goods.’ And in an internecine struggle between Donald Gorm Macdonald of the Sleat and Sir Rory Macleod of the Harris, in 1601, Macleod’s people invaded ‘the Isle of Uist which appertaineth to Donald Gorm,’ and sent a bearer ‘with some 40 men to spoil the island and to take a prey of goods out of the precinct of Kiltrynaig, where the people had put all their goods ‘to be preserved as in a sanctuary, being a church.’<sup>1</sup>

How closely the Scots law of later centuries followed the terminology employed in the Statutes may be seen by comparing the usage as to ‘term’ in Statutes 233, 236, and as to the oath *de calumnia* in Statute 229, with this sentence from a decret of the year 1576, cited in 1761 in the case of Justice *v.* Murray, from vol. xi. of the Campbell collection of Session Papers in the Advocates’ Library:—

‘Quilkis allegiances the said Mr. Edmund, prolocutor foir-said, offerit him to preif sufficientlie, and the samin being funding relevant be the saidis Lordis, ane terme was assignit be them to the said Hary for preiving thairrof, and he being lawchfullie warnit be our sovirane Lordis lettres past upoun an Act of the saidis Lordis, to have compeirit personallie befor them, to haif gevin his aith *de calumnia* upoun the poyntis of the saidis allegences; with certification to him, and he failyeit thairin, he wald be haldin *pro confesso*, and ane decret gevin aganes him, according to the desyre of the said

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<sup>1</sup> See a manuscript of the reign of James VI., first printed in 1764, and reprinted in vol. i. of *Miscellanea Scotica* (4 vols., 1818-20).

principal summondis; and the said Hary, for satisfying of the desyre of the said terme, compeirand personallie in presens of the saidis Lordis and being sworne to gif his aith *de calumnia* thairupone . . .’

One historic result, indeed, is not explained by the official view of the causes that led to the Reformation—the tenderness with which, during and after the cataclysm, the dissolute and ignorant clerics were personally treated. Nowhere was the judgment passed on churchmen by the supreme authorities of the church so sweeping as in Scotland; and in no part of western Europe were lords and commoners wont to take more fully on themselves the duty of attending to the immediate administration of justice and vengeance, and to the wiping out with their own hands of old personal scores. Yet we hear of little or no violence or cruelty exercised on the most dissolute monk or priest. A sound and conscientious Catholic writer, Lord Bute, has insisted that in Scotland ‘the dissolution of the religious houses was effected without that cruelty and injustice towards individuals which marked the proceedings of Henry VIII.’ Many of the most respected of the monks, canons, and friars, as well as of the old parochial clergy and other seculars, entered the ministry of the Reformed church; but many of the unreformed clerics were allowed peacefully to remain in the enjoyment of their stipends. Two-thirds of the free ecclesiastical revenues were understood to remain in the hands of the ministers of the old church, by way of vested life-interest—surely a generous provision under the circumstances. But this is quite of a piece with what, in spite of much violent invective and severe penal legislation against the celebration of masses, Lord Bute emphasised as the outstanding feature of the crisis in all that concerned dealings with persons, ‘the mild and conservative manner in which the Reformation was effected in Scotland as compared with England. A tempest of blood and fire raged in England for something like three hundred years . . . The maximum of persons put to death in connec-

tion with the Reformation [in Scotland] is stated to have been nineteen on one side and five or six on the other. Admit the twenty-five. Henry or Mary would have consumed them in a month.'<sup>1</sup> And the Anglican Act of Uniformity in 1662 drove out of their churches and homes, without charitable allowance, some two thousand clergy against whom only theological nonconformity could be charged.

The Statutes themselves would certainly have justified very strict and thorough 'visitation' of manses, monasteries, and episcopal palaces for scandalous ministers. Let us hope that the kindlier treatment meted out to the old clergy was because amongst their number many more than fifty righteous were found. Lyndsay does not deny that there were in the church some good and virtuous priests, some grave and pious doctors—sadly in the minority on his showing, it must be admitted. The articles of the lords and barons indubitably assume that there were preachers 'of gud manners and of fitt knowledge,' of doctrine and profession conformable to God's Word and the Christian faith. The Catechism of 1551-2 itself seems to bear witness to the existence in the church of a body of sound and sincere Christian men and teachers. At its worst the old church had kept alive, had at least not killed, the spirit of Christianity in the country, or the earnest determination of the Scots to be Christian according to their lights. But alas! the best Catholic authorities spoke of the corruption as all but universal; the Statutes show that it was widespread, deep-seated, and chronic. The leaven was not enough to leaven the whole lump. For three hundred years much needed reformation had been constantly proposed, but the mischief grew only the worse. After all these confessions, warnings, threats, legislative enactments, solemn promises, self-denying ordinances, the church still cherished in her bosom 'very many'

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<sup>1</sup> See Lord Bute's Rectorial Address at St. Andrews in 1893, p. 45. Lord Bute had rather understated the number of sufferers on the Protestant side, and apparently overstated the Catholic victims.



of the vipers denounced; and of them those who had reformation oftenest in their mouths were furthest from it in their hearts. The Scots had long been nursing their wrath; by 1559 the heat had reached the explosive stage; Scottish history is largely a series of *coups-d'état*. The council and the church, as constituted, had outlived their usefulness; the Provincial Council, which seemed to exist mainly to confess its sins and make futile promises of amendment, had indeed contributed no little to the sudden and complete collapse of the church; and further meetings of the Fathers and Brethren on the old footing were to be rendered for ever impossible.

## XIII

It has been thought well to add to this Introduction text as well as translation of three unpublished documents from the Advocates' Library, cognate to some of those collected by Dr. Robertson in the second Appendix to the *Statuta*. My attention was called to them by Professor Herkless and Mr. R. K. Hannay, and the curators of the Library have courteously given me permission to print them here.

They are intimations issued by Archbishop Schevez or Schives, who, as an accomplished physician and astrologer, stood high in the favour of the favourite-loving James III., and, arch-deacon of St. Andrews from 1459, became ere long the most influential churchman in the country and the most deadly enemy of his immediate superior, Patrick Graham, first Archbishop of St. Andrews (1472-78). Schevez, who for a year or two called himself Graham's coadjutor, occupied the metropolitan see from the year of Graham's deposition till his own death in 1497, having from 1487 enjoyed the added dignities of Primate and Legatus Natus. He discharged important political missions to England, France, and Rome; and in 1488 took part in the rebellion which led to the overthrow and death of his patron, James III., and secured the crown for

the youthful James iv. Archbishop Graham had opposed the promotion of Schevez (whose family took its name from the estate of Schivas in the Aberdeenshire parish of Tarves), because he was ignorant of theology; and he was regarded as an intriguing and time-serving prelate.

These documents have been transcribed by the Rev. Henry Paton from folios 28b and 29 of the 'Gray Manuscript'—a collection of manuscripts (on 79 leaves small quarto) which, on internal evidence accepted as authoritative in the (MS.) Catalogue of the historical manuscripts in the Advocates' Library, seems to have been the handiwork of James Gray, priest and notary public, and secretary in succession to Archbishops Schevez and James Stewart. They are therefore in all probability duplicates in the handwriting of the ancient cleric who himself drafted these intimations for the first Primate and Legatus Natus of Scotland.

Of these three intimations, the first and third are analogous to No. 2 and the second to No. 5 of the later series issued by Archbishop Forman, and translated at pp. 261-2 and 264 of this volume. In the first mandate, procurations are payments made towards the expenses of the periodical visitations. When further the outlays that would have been incurred by a church for the hospitable entertainment at visitations of bishop or archdeacon were commuted to a money payment, it was called *caritas* or *subsidium caritatis*. But all diocesan dues were called *caritativa*, 'which could more gracefully be accepted than demanded.' The 'new tax' or taxation had nothing to do with the *verus valor* established by Boiamund de Vicci in 1274-5 as against the *antiqua taxatio*, the old valuation of ecclesiastical benefices (discussed by Dr. Robertson in his Preface to the *Statuta*, pp. lxx-lxxvii), but was obviously what the *Accounts of the Lord High Treasurer of Scotland* (see Dr. T. Dickson's Preface to vol. i. p. xlvii) call expressly 'the last tax grantit be the clergy,' namely, a sum of 12,000 merks raised by the churchmen and given to the king in 1472,

after Graham had been raised to metropolitan rank, in order to gain over the king to side with them against their most unhappy archbishop.

In the second intimation, revoking—temporarily at least—episcopal favours in force, the right of choosing one's own place of confession and confessor was a privilege all the greater in 'reserved cases,' inasmuch as misdemeanours reserved to the bishop in one diocese were not necessarily reserved in other dioceses; and elsewhere, for those who were not 'kinless loons,' there might be a friend in office. The authority to have masses said in unconsecrated places might by Statute 7 be granted (*e.g.* to lairds) by the ordinary alone. From the twelfth century, the building of bridges was almost as pious an undertaking as the erection of churches and chapels, and indulgences were often granted for that public service.

In the third document as in the first, Magister James—who, according to an entry in the *Register of the Great Seal* under 1490 was vicar of Halis (Hailes)—wrote *sinado* very plainly in place of *synodo* or *sinodo*.

[1] The most reverend father in Christ and lord, the lord William, by the divine mercy Archbishop of St. Andrews, enjoins on all and sundry abbots, priors, provosts, deans, rectors, vicars perpetual, and their factors and agents and other officers whatsoever of his diocese, that none of them depart from the present synod before and until payment has been made and paid over, completely and in full, to the said most reverend father in Christ or his deans, of all and sundry the procurations, synodal dues, ordinary debts, and the remainder of the free will subsidy; also of whatsoever sums are due to him in money or in victuals; as well as of the taxation, old and new, of our supreme lord the king; and likewise that none presently ministering in cures depart or presume to withdraw until they have been examined in the matters that concern their offices by the officials of the said most reverend father in Christ, and have been admitted to the said offices; and that they who have been found and held qualified accept and uplift certificatory letters in respect of the examination passed

and their admission, under pain of suspension from divine rites. Given under the seal.

Mandat Reverendissimus in Christo pater et dominus Dominus W[illiellmus] miseratione divina Sancti Andreae Archiepiscopus, universis et singulis abbatibus prioribus prepositis decanis rectoribus vicariis perp[etuis] et eorum f[actoribus] et intronissoribus ac aliis officiariis sue dioceseos quibuscunque Quia nulli eorum a presenti sinado recedant donec et quousque eidem reverendissimo in Christo patri vel suis decanis de omnibus et singulis procurationibus sinodalibus oneribus ordinariis ac resta subsidii caritatis necnon de quibuscunque aliis pecuniarum seu victualium summis sibi debitis ac etiam de taxatione supremi domini nostri Regis veteri et nova plenarie et integre satisfactum fu[er]it et persolutum, et quod nulli presentialiter ministrantes in curis similiter recedant seu recedere presuma[n]t donec per officiales dicti reverendissimi in Christo patris in hiis que ad eorum officia spectant examinati et ad eadem officia admissi fuerint et quod ipsi inventi et reperti ydonei literas testimoniales super hab[ita] examinatione et admissione recipiant et levent sub pena suspensionis a divinis. Datum sub sigillo.

[2] We, William, etc., by tenor of the presents do revoke, quash, and annul all and sundry the powers and licences for hearing confessions or for choosing, even in cases reserved to us, confessionals and confessors, for celebrating and hearing divine rites in oratories, chapels, and unconsecrated places, also indulgences on account of chapels, bridges, and all other works, hitherto granted within our diocese in times past to whatsoever persons, ecclesiastical or secular; and this we make known to all whom it concerns or shall concern by the presents; to which our seal is appended.

Nos Willielmus, etc. Omnes et singulas potestates et licentias confessiones audiendi sive confessionalia ac etiam in casibus nobis reservatis et confessores eligendi, in oratoriis capellis et locis prophanis divina celebrandi et audiendi, indulgencias etiam capellarum poncium et omnium aliorum operum, quibuscunque personis ecclesiasticis vel secularibus infra nostram diocesim hactenus per nos temporibus retro-actis concessas, tenore presencium revocamus cassamus et annullamus. Et hoc omnibus quorum interest vel intererit notum facimus per presentes, quibus sigillum nostrum est affixum.

[3] The most reverend father in Christ, William, enjoins on

all and sundry rectors, vicars, chaplains, with or without cure of souls, holding benefices within the archdeaconry of St. Andrews, who are held bound to the venerable father in God, the archdeacon of the same, for any procurations due for the term past in respect of visitation by him or by his procurators, that they do not depart from this synod unless they have made payment to him of his procurations, or made with him an arrangement about the same, under penalty of suspension from the celebration of divine rites, as by sentence already passed. Given under the seal.

Mandat Reverendissimus in Christo pater Willielmus, omnibus et singulis rectoribus vicariis capellanis curatis et non curatis infra Archi-[diaconatum] S<sup>ti</sup> [Andree] beneficia habentibus qui venerabili viro in Domino patri Archi[diacono] ejusdem in aliquibus pro[curationi]bus ratione visitationis per se et suos procuratores de termino elapso tenentur astricti, quatenus non recedant ab hac sinado nisi sibi de suis pro-curationibus satisfaciat aut desuper secum componat sub pena suspensionis divinatorum celebratione sententia lata. Datum sub [sigillo].

## XIV

This translation was undertaken, not without misgivings, in deference to the urgent wishes and persuasions of Dr. T. G. Law, whose invaluable promised aid was unhappily lost ere the work was well begun. Bishop Dowden most kindly revised the translation of the earlier Statutes, down to the meeting of the Council of 1549, and made many important corrections and suggestions. Dr. Hay Fleming has from the first put under contribution his unique stores of learning in all that concerns Scotland in the fifteenth and sixteenth centuries; has, at the cost of much time and labour ungrudgingly bestowed, read in the most careful way translation, notes, and introduction throughout, and supplied innumerable illuminative hints. To Dr. Dowden and Dr. Hay Fleming I owe especial gratitude. But I am also much indebted to Dr. Maitland Thomson for advice in several difficulties. A Roman Catholic friend helped me with the translation of many of the Statutes; and while I take on myself full and



undivided responsibility for possible slips and misapprehensions—for which obscure texts of doubtful interpretation leave in many places too much room—I have also to acknowledge, on one or more specific points or problems, the courteous assistance of the late Miss Mary Bateson, Sheriff Neil J. D. Kennedy, the Rev. Professor John Patrick, Professor Hume Brown, the Rev. W. H. Frere, the Rev. John Anderson, Mr. J. R. N. Macphail, Mr. J. Hepburn Millar, and Mr. John Rutherford. Where the Scottish Statutes are drawn directly from the canons and decrees of the Council of Trent, I have, without everywhere following it, taken full advantage of Dr. Waterworth's well-known translation (1848). And for permission to copy manuscripts, I gratefully acknowledge the courtesy of the librarian of the Lambeth Palace Library, and of the curators of the Advocates' Library in Edinburgh.

Let it be permitted to me to conclude with a text from the prologue to *Ecclesiasticus*—a book more sacred in the eyes of mediæval than of modern Scots: ‘Ye are intreated therefore to read with favour and attention, and to pardon us if in any parts of what we have laboured to interpret, we may seem to fail in some of the phrases.’

DAVID PATRICK.

### BISHOPS OF ST. ANDREWS FROM 1403

Henry Wardlaw,	.	.	.	.	1403-1440.
James Kennedy,	.	.	.	.	1440-1465.
Patrick Graham,	.	.	.	.	1466-

### ARCHBISHOPS OF ST. ANDREWS

Patrick Graham,	.	.	.	.	1472-1478.
William Schevez,	.	.	.	.	1478-1497.
James Stewart,	.	.	.	.	1497-1503.
Alexander Stewart,	.	.	.	.	1505(?) - 1513.
Andrew Forman,	.	.	.	.	1516-1521.
James Beaton,	.	.	.	.	1522-1539.
David Beaton,	.	.	.	.	1539-1546.
John Hamilton,	.	.	.	.	1549-

### ARCHBISHOPS OF GLASGOW

Robert Blackader (bishop before 1484),	.	.	.	.	1492-1508.
James Beaton,	.	.	.	.	1508-1522.
Gavin Dunbar,	.	.	.	.	1524-1547
James Beaton,	.	.	.	.	1551-

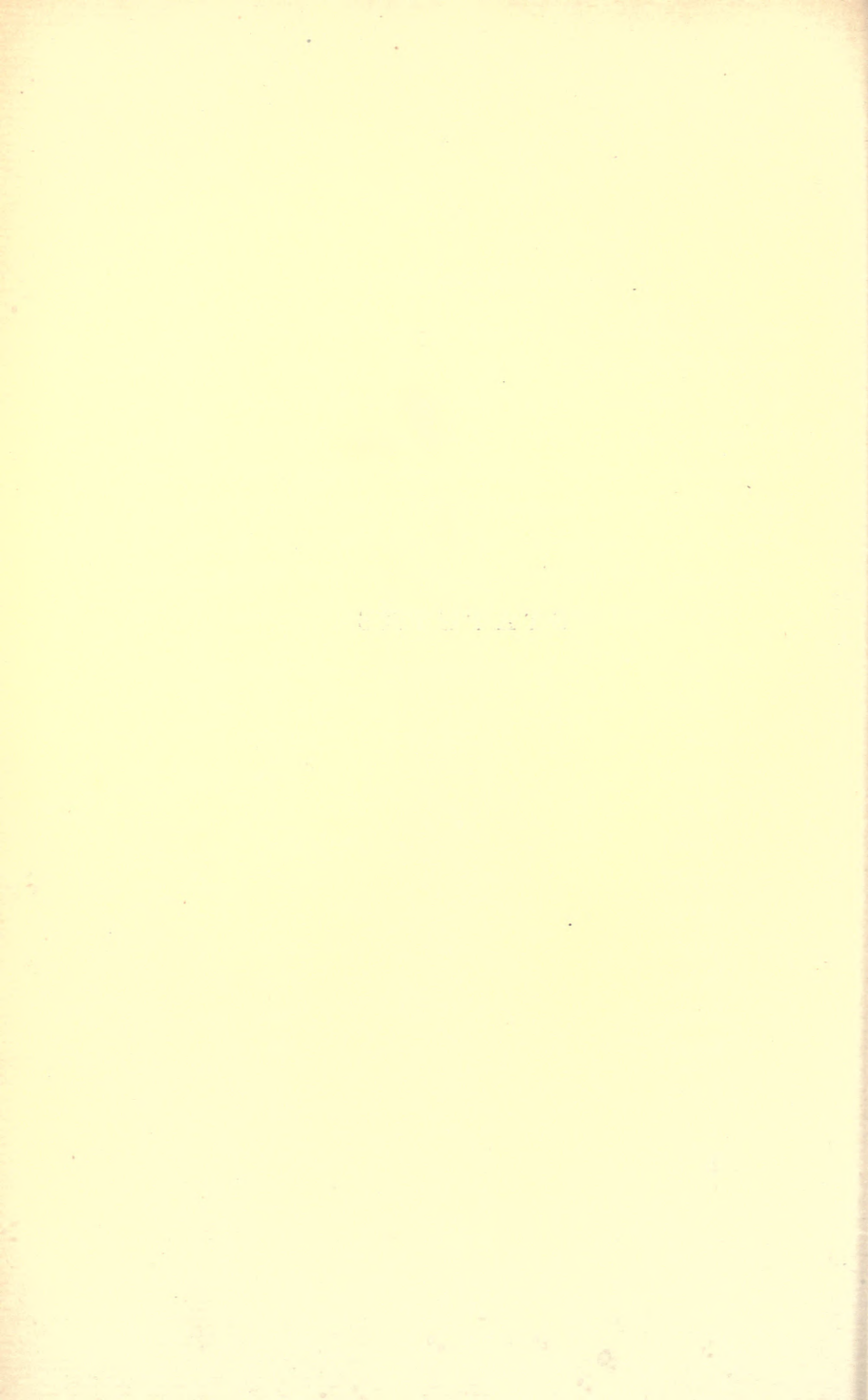
## TABLE OF MONEY VALUES

As Scots moneys are frequently referred to in the *Statuta*, it is well to remember that though before the union of the crowns Scots values were but a twelfth of the corresponding English designations, it was not always so. Till 1355, Scottish pounds, shillings, and pennies were of the same value as the English moneys, and the debasement and shrinkage in value of the Scottish coinage was a very gradual process during almost the whole period to which most of our Statutes refer. According to Cochran-Patrick's *Records of the Coinage of Scotland* (1876 ; Introduction, p. lxxvi) the comparative values of English to Scots money were :

Till 1355 [rather perhaps till 1368]	.	.	equal.
About 1390,	.	.	1 to 2.
„ 1451,	.	.	1 to 2½.
„ 1456,	.	.	1 to 3.
„ 1467,	.	.	1 to 3½.
„ 1475 (gold),	.	.	1 to 4.
„ 1544	.	.	1 to 4.
„ 1560,	.	.	1 to 5.
„ 1565,	.	.	1 to 6.
„ 1579,	.	.	1 to 8.
„ 1597,	.	.	1 to 10.
„ 1601,	.	.	1 to 12.

## STATUTES







# STATUTES OF THE SCOTTISH CHURCH

## I

### Bull of Pope Honorius about the Holding of a Provincial Council in Scotland.

HONORIUS, bishop, servant of the servants of God, to his venerable brethren all the bishops of the kingdom of Scotland, greeting and the apostolic benediction. Certain of you lately brought to our ears the knowledge that since ye had not an archbishop by whose authority ye might be able to hold a provincial council, it results that in the kingdom of Scotland, which is so remote from the Apostolic See, the statutes of the General Council<sup>1</sup> are disregarded and very many irregularities committed which remain unpunished. Now since it is improper to omit the holding of provincial councils, in which zealous consideration, under the fear of God, should be given to the correction of transgressions and the reformation of morals, and the canonical rules be read over and recorded, especially the rules decreed by that same general council; by apostolic warrant to you we command that, since ye are known not to have a metropolitan, ye hold a provincial council by our authority. Given at Tivoli<sup>2</sup> the nineteenth day of May in the ninth year of our pontificate [1225].

## II

### Letter of the Conservator for the Assembling of the Provincial Council.

To the reverend father in Christ, etc. . . . Dominus, etc.  
. . . (So and so) bishop of Moray and conservator of the

<sup>1</sup> The Fourth Lateran Council, 1215, whose words are here in part reproduced.

<sup>2</sup> In spite of the spelling, *apud Tyberym* unquestionably means 'at Tivoli'—the ancient Tibur, Horace's 'udum Tibur.' Pope Honorius III. left Rome *propter bella et seditiones*, and by the 20th April 1225 had settled *apud Tyburem*, where he remained till the middle of June. See Potthast, *Regesta Pontificum Romanorum*, vol. i. (1874), under date 1225; Mas Latrie, *Trésor de Chronologie*, col. 1115.

Scottish council, greeting. So many burdens are, by those who appear to have the power, at this time laid on the churches in our parts that the priests and their possessions labour in mortar and brick,<sup>1</sup> and are put to such straits that all drink of the cup of bitterness: Desiring therefore to restore the church to its wonted and pristine liberty, and that it be so restored, we by our authority as conservator appoint a provincial council to be held at Perth in the house of the Friars Preachers on Wednesday next after the feast of St. Luke the Evangelist and following days: by the same authority requiring and in the Lord straitly exhorting your reverend fatherhood to compear there on the said and following days with the prelates<sup>2</sup> of your diocese, and suitable procurators of chapters, of collegiate churches, and of conventual houses, in becoming vestments, in order to consult upon the reformation of the condition of the church and on other matters which are inconsistent with the liberty of the church. Nor do we doubt that even in modern times the Lord, who in the days of Elias reserved seven thousand men that had not bowed the knee to Baal, hath, in the Scottish church now under oppression, preserved some precious pearls for himself.

### III

#### Mode of Procedure in the Council of the Scottish Clergy.

First, let the bishops be arrayed in albs and amices,<sup>3</sup>

<sup>1</sup> A reference to the Israelites in Egypt, as given in the Vulgate, Exodus i. 14: *Atque ad amaritudinem perducebant vitam eorum operibus duris luti et lateris*; so Judith v. 10. The letter seems to date from the troublous end of the fourteenth century.

<sup>2</sup> The abbots and priors and other 'lesser prelates': see Introduction.

<sup>3</sup> *Amice* is the only modern English form for two distinct words referring to totally different things: *amicia* or *amictus* (French *amit*), properly a square of linen worn by celebrant priests on neck and shoulders, and *almucia* or *almucium* (French *aumusse*), a hood or hooded cape made of or lined with fur and worn by certain clerics and religious as an article of costume. The latter was lined with fur, usually though not universally grey, and was commonly referred to as 'the grey amice': there is a fine representation of it in the contemporary portrait at Holyrood of (Dominus) Edward Bonkle, first Provost of Trinity College Church, Edinburgh (founded 1462). The bishops and the candle-bearers are directed to wear the *amictus* (unless *amictis* is to be read *amiciis*), and the deans and archdeacons the *almucium*.

copes, solemn mitres,<sup>1</sup> gloves, holding in their hands their pastoral staves: abbots in surplices and copes, the mitred abbots in mitres: deans and archdeacons in surplices, amices, and copes: and the other clergy in decorous and becoming raiment: Then let two candle-bearers wearing albs and amices with lighted candles go before the deacon who shall read the Gospel—‘I am the good shepherd,’ etc., whom a subdeacon shall accompany: and let the deacon ask a blessing from the conservator if he be present, and if he be absent, from the senior bishop. When the Gospel has been read, the book is to be kissed by the conservator and each of the bishops: Then the conservator shall begin the hymn ‘Veni, Creator,’ and at every verse let the altar be censed by the bishops: thereafter let him who has to deliver the sermon obtain a blessing from the conservator and begin his sermon at the side of the altar. The sermon finished, let the names of those summoned to the council be called, and let those absent be punished according to the statutes; and when the statutes have been read, let the bishops excommunicate publicly according to the statutes, having each of them candles in their hands; [as follows]—

## IV

## Form of Excommunication.

By authority of God the Father Almighty and Son and Holy Spirit; and of Mary, holy mother of God; and of St. Michael the Archangel and of all Angels and Archangels; and of St. John the Baptist; and of all Patriarchs and Prophets and holy Apostles and Evangelists, Innocents, Martyrs, Confessors and Virgins; and of all the Powers of heaven<sup>2</sup> and of holy canons and of our ministry: We excommunicate, condemn and anathematise and thrust out from the confines of the holy mother the church of God all who scheme against their own bishops or the other bishops of the realm or other prelates, and all who abet the schemers, for that all such are schismatics and infamous persons. We excommunicate also all who in a matrimonial or other cause knowingly

<sup>1</sup> The grandest of a bishop's three mitres, jewelled and otherwise adorned, was called the solemn or precious mitre.

<sup>2</sup> *Omnium celestium Virtutum*: angelic powers of the second rank; see the Vulgate at Romans viii. 38. The form may date from the thirteenth or fourteenth century.

bear false witness, raise objections in malice, or procure objections to be made, or suborn witnesses, or procure that to be done in a matrimonial cause. We excommunicate all those who disturb the peace of the king and kingdom, and all who through malice or for the sake of gain bring against others charges by which their character is defamed or of which, should they be judicially convicted, the consequence must be death or exile or mutilation of members or disinheriting or despoiling of goods. We excommunicate all who keep back unjustly the tithes they owe, and all who against the will of those to whom they rightly appertain take or keep possession of tithes due by themselves or others, or who on any cunning pretext hinder or intimidate rectors of churches or vicars or their proctors from the power to dispose freely at their will of their tithes. As also notorious usurers; open rieviers; those who put obstacles in the way of wills duly made; fire-raisers; disturbers and violators of ecclesiastical liberties and immunities in lands or waters or in woods or pastures or any properties whatever; or those who abet them or give them advice, help or countenance. As also witches and all who countenance and protect and support them in their evil doings, as well as those who are parties with them in their misdeeds; all who invade or plunder ecclesiastical goods, or on lands bestowed in free gift [on the church] take by force anything against the will of those to whom it belongs; exception being made in favour of the servants of our lord the king and queen and their son taking for their necessary uses [such things] when they are not able to procure them elsewhere, provided they pay for such a just price. Accursed be all the forenamed persons; cursed be they without and within, from the sole of the foot even to the crown of the head. And may their part and companionship be with Dathan and Abiram whom the earth swallowed quick. May their days be few and their offices let others take; may their children be orphans; and as this light is at this moment extinguished, so may the lights [of their lives] be extinguished before the face of Him who liveth for ever and ever; and may their souls be plunged in hell unless they repent and amend their ways and make satisfaction. So be it! so be it! Amen!

## V

[A General Excommunication to be Published and  
Fulminated in Churches four times a year.]

Of the autorite of God Almychty Fadyr and Sone and Haly Gast, and of the Blissyte Virgynne Mary, and of Sanct Michael the Archangel and of al haly Angelis, and of Sanct Johnne the Baptist and of al Patriarchis and Prophetis, and of Sanct Petir and Paule [and of al] Apostlis and Euangelistis, and of Sanct Stewyn Martir and of al haly Marthiris, and of Sanct Nicolace and Sanct Ternanne the Confessoris, and of al haly Confessoris, and of Sanct Kateryne the Virgyne and of al haly Virgynes and of al the Sanctis of Hewyne: We curss waryis and condannes and owtstekys fra the fredome of Haly Kyrk al conspiratouris that rysis aganne thar awne byschop or ony othir byschop of the realme, agane the fredome of Haly Kyrk. Al thaim that beris fals wytnes in cause of matrimonye or procuris it to be borne or consentis or fauoris to thaim. Al thaim that differis or lattis rychtwis airis to bruke thar heritagis or wittandly makis wrangwis airis, or assentis to thaim. Al thaim that gerris ony mann tyne life or lym or honour or gudis for malice or fede or covatice of gudis. Al fals assysouris that for meyd gerris menn tyne gudis, lyfis, or gude name. Al that strublis the Kyngis pece without leyf. Al that puttis fals cryme til ony mann for malice or fede or wynnyng quharthrou he tynis his life, his gude name, membris of his body or disherising, bannesing, or spoliacione of gudis may folow. Al fals teyndaris and al thaim that haldis or gerris hald thar awne or otheris mennis teyndis owthir be strynth, sutelte, or mycht fra thaim that sulde haue thaim. Al thaim that lettis or gerris let personys, vicaris, or thare deputis to dispoone at thair awne wyl, and for to set thair teyndis quhom to thai lyke and for thair maist profyte. Al thaim that mynysis thair teynd for fraude or malice of thaim that aucht to haue it, and al thaim that for fraude of the teynd lefis the stok vnlaborit. Item al thaim that takis halowit thing out of vnhalowit placis, or vnhalowyt thing out of halowit placis, or halowit thing out



of halowit placis, without leif of the hedeman of the place. Item all commone okkeraris. Al thaim that brekis testament lauchfully maid. Al thaim that byrnis kirkis or howsys or consentis tharto without leif askit and obtenit of thaim that has power tharof. Item all thaim that strublis the fredome of Haly Kirk in wod, watir, or pastur or consentis tharto. Al wichis and trowaris in thaim. Al commone reifaris and resettaris of thaim. Al commone thefis and resettaris of thaim. Al thaim that puttys violent hand on preist or clerk bot in thare defens. Al commone sclanderaris. Al thaim that strikis fals monee or clippis the Kingis monee without leyff. Al erratikis kyd and kend. Al thaim that castis thar barnis at kyrk duris or in othir placis to be perist ony maner of way. Al thaim that distrois barnis consavit betuex mann and woman be drynkis or ony maner of way, for conceling of synn or ony othir thing. Al thaim that poisonis mann or woman or purchesis it to be done. Al falsaris of the Papis bullis. All thaim that makis fals charteris to disheris menn of thar landis or gudis. Al thaim that wittandly oisis fals met or mesur or weicht to dissayve ony man. Al thaim that has bene thris lauchfully monyst in this kirk and vnamendit. And al consalaris, resattaris, helparis, and fauoraris to thame.

Of the autorite of God Almychty Fadir and Sonn and Haily Gast and of the Blissit Virgyne Sanct Mary and of al the Haly Sanctis of Hewyne, We curs wareis and condemnis al thaim that ar fornennyt and al thaim that gifis help, consale, supple, reset, or fauor to thame. Cursit be thai syttand, standand, rydand, gangand, slepand, waikand, etand and drinkand, in hows and owt of hows. Cursit be thai fra the crowne of the hede to the soile of the fute. Castyn be thai owt of the duelling place of Cristin menn, and othir menn bruke thar lordschip. Na helparis haue thai. Few be thar daies, othir men bruke thar possessionis. Oute be thai tane of the buke of lyfe, and with rychtwiss menn be thai nochit wrytyn; thar duelling be with Dathan and Abyrone, the quhilkis the erde swellyt for thar synn. And as this candil is castyn fra the sycht of men, swa be thar saules castyne fra the sycht of God into the depast pot of hel, euer to remane with

cursit Nero, the wikkyt emperour, and his cursit falowschip, bot gif thai cum til amendis eftir thair power. Amen.<sup>1</sup>

(And then the candle having, according to use and wont, been cast on the ground and extinguished, let the bell be rung.)]

<sup>1</sup> This unusually comprehensive formula, in use in the Aberdeen diocese (hence the special mention of St. Nicholas and St. Ternan), is a specimen of vigorous vernacular Scots of the fifteenth century. While some of the sentences and phrases are very old—thus, Dathan and Abiram appear in the excommunications of the eighth century—it is very obvious that the whole must have been extended from time to time so as to cover the offences specifically condemned by the statutes of the Council. Thus the paragraph which practically puts interference with the priests' rights in teinds on the same level with, say, poisoning, summarises several statutes.

It is curious that the wording seems to imply that leave might be got to break the king's peace, to clip his money, if not to coin false money; and that one might burn kirks and houses with a clear conscience after 'leif askit and obtenit of thaim that has power tharof.' The prophylactory clauses are apparently a (too) summary way of indicating that the severer measures would not fall on the heads of those who committed such *enormia* under the commands of lawful superiors; some latitude would be allowed for debateable incidents, perhaps in the not unusual case of armed risings or civil war. Scotland was by no means the only place where such irregularities occurred. In 1196 Hubert Archbishop of Canterbury set fire to the church of St. Mary le Bow in order to stifle or smoke out a socialist orator who had found inconvenient asylum there. Not without cause, a church council at Breslau in 1248 expressly excommunicated those who set fire to churches in order to get at those who had sought asylum in them. See *Dict. Nat. Biog.*, s. vv. Hubert and Fitzosbert; Hefele, *Concilien-geschichte*, vol. v. p. 1153.

*Wary* or *warie* (Middle English *warien*; Anglo-Saxon *wergian*) was still the standard word for to curse or excommunicate in Scotland in the sixteenth century. *Owtstekys*, steak out, shut out; *differis*, defers, delays; *lattis*, prevents; *rychtwis*, righteous; *bruke*, enjoy; *wrangwis*, wrongous, false; *meyd*, reward; *gerris*, gars, causes; *lettis*, hinders; *strublis*, troubles; *mynysis*, diminishes; *stok*, land and gear, the 'dead stock' as opposed to the 'live stock'; *hedeman*, the lord of the manor; *okkeraris*, usurers (cf. German *Wucherer*).

*Erratikis kyd and kend*, heretics confessed and known. *Kyd* is one of many spellings (*y-kyd*, *y-kydde*, *i-kid*, etc.), 'misunderstood by Palgrave and misused by Spenser' according to Dr. Murray in the *N. E. D.*, of the past participle of *kythe*, *kythe*, to show, to manifest, to show oneself. Thus we have *icud* and *iknowen*, the very same words, in the *Ancren Riwele*; and the metrical version (Rous's) of Psalm xviii. 26, has:

'Pure to the pure, froward thou kyth'st Unto the froward wight.'

*Disheris*, disinherit; *oisis*, uses; *met*, mete, measure; *monyst*, admonished; *cum til amendis*, come to make amends, to give satisfaction; perhaps also including the idea of amendment—come to a better mind. The Latin formula has *satisfactionem et emendationem*.

A marginal *nota puncta* at line 9, and *summa* at the beginning of the second paragraph, have been omitted as outside the text.

## [General or Provincial Statutes of the XIIIth Century.]

HERE BEGIN THE GENERAL STATUTES OF THE  
SCOTTISH CHURCH.

The canons of the General Councils, as Isidore saith, begin from the time of Constantine the emperor; to which the holy Roman church, as the Catholic faith gained strength, and the holy fathers assembling at the Nicene Council, attributed a certitude next after our faith in the Gospels and the Epistles, decreeing amongst other things [ . . . ] As blessed Gregory the pope saith: I profess that I accept and venerate the four councils as I do the four books of the Holy Gospel, namely the Nicene, the Constantinopolitan, the Ephesine, and the Chalcedonian; in which heretical perversities and the assailants of the Catholic faith were confounded and the Christian religion received a solid foundation, to the glory of God and the salvation of all believers. Accordingly it has with advantage been established throughout the provinces and realms of Christian princes that every year provincial councils should duly be held, to the beautifying of the house of God and the firmer maintenance of the Catholic faith. And to this institution Pope Honorius of happy memory gave his special assent as regards the Scottish church in this form: Honorius, bishop, servant of the servants of God [as above, page 1]<sup>1</sup>

<sup>1</sup> It is here assumed that the proemium to the statutes was never written out in full, and that in Dr. Robertson's texts something was omitted where [ . . . ] stands in the translation. Manifestly the Nicene Council did not decree anything about the authority of the three later ecumenical councils, as Dr. Robertson's text, taken strictly, makes it do. The Scottish fathers designed apparently to abridge in a few sentences the two chapters of Gratian's *Decretum*, from which they quote, and after *inter alia statuentes* to give some abstract of the decrees of the four councils, as both Gregory and Isidore do in the places referred to. The first draft left, doubtless, a gap to be filled in afterwards; later MSS. ignored the gap. Lyndwood, in the *Provinciale*, constantly cuts short the edifying introductions; our copyists omitted inessentials with an 'etc. etc.' (see Statute 27), and were capable, as the *variae lectiones* show, of putting down *certum diem* instead of *certitudinem* in this very proemium. And *dicit Gregorius quod venerari me fateor* is below even Gregory's modest standard of Latinity (see Gratian's *Decretum*, *distinctio xv. capp. 1 and 2*).

(1) By authority therefore of Almighty God and the sacred canons, and the most holy Roman church; we the prelates of the Scottish church, holding a provincial council after the manner of our predecessors and following their laudable custom,<sup>1</sup> with one consent resolve and ordain that every year all bishops and abbots and priors of priories shall religiously assemble in ceremonial vesture for the holding of a council on a certain day to be duly intimated to them by the conservator of the council; so that they may be able to remain at the same council for three days, if need be, in accordance with the divine and ecclesiastical demands [of the occasion]; and, the grace of the Holy Spirit having been invoked, to reform the condition of the church as may be therein required and in a manner pleasing to God. And if any of them be detained by a canonical hindrance, let him send in his place a suitable proctor. But if he come not in person when he can, but will not, let him be punished by the authority and at the discretion of the Council.

(2) How the Conservator should be chosen.

And we ordain firstly that every year the duty of preaching be laid on one of the bishops one after the other, [to be performed] at the next council by himself or by another to be proposed [by him], beginning with the bishop of Saint Andrews; and that by choice of the others one of the bishops be appointed conservator of the statutes of the council; who shall hold his office from council to council, and shall punish open and notorious offenders against the council or the transgressors of any decree passed at it, and shall effectually compel them to make due satisfaction by ecclesiastical censure as law demands.

(3) Of the Catholic Faith.

We ordain with the approbation of the holy council that prelates greater and lesser shall undoubtingly hold the Catholic and apostolic faith, and shall diligently instruct in the articles of the faith those of both sexes under their authority; warning and persuading their parishioners themselves to explain that same faith to their children and to teach them to keep the Christian faith.

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<sup>1</sup> This statute could obviously not have been passed till annual councils had become an established usage.

## (4) Of the celebration of the sacraments.

We ordain also that the sacraments of the church be celebrated with devout solemnity in the Catholic faith according to the precise form handed down by the holy fathers and the holy scriptures in the precise words catholically written; and that nobody shall venture to alter in any way the canonical form or the precise words catholically handed down in it.

## (5) Of the building of churches.

We further ordain that in accordance with the means of the parishioners churches shall be built of stone by the parishioners themselves and their chancels by the rectors themselves; and shall afterwards be consecrated, and adorned with the proper ornaments, books, and vessels, and put into a proper condition.

## (6) When chapels are not to be built.

Likewise we ordain that no chapel or oratory be built without the consent of the diocesan; and that no sacred offices whatever be performed, or rather (according to the sacred canons) profaned, in such as have been built without his consent or authority. ¶ And since we find this statute in many places too little regarded; we ordain that each of us shall diligently make inquiry in his diocese by what right and by what authority [chapels] have been built; that if they have been built or shall ever hereafter be built without sufficient reason, let them according to canonical rules be suspended: It being seen to that by whosoever authority whatsoever chapels have been built regard shall in all things be had to the indemnity of the mother church<sup>1</sup> so that no prejudice shall accrue to it. Nor shall any part of the offerings be anywhere taken by privileged persons, unless a proper warrant to that effect be shown to the ordinary; but if any persons do contrariwise, let them be *ipso jure* suspended.

## (7) That masses are not to be celebrated in private places without leave of the bishop.

Furthermore some members of the religious orders and others, as well secular as ecclesiastical persons, cause divine rites to be celebrated for them, or rather to the scandal of the whole church profaned for them, in private and dis-

<sup>1</sup> The mother church (*matricis ecclesiae*) in this case is the parish church.



honourable places (where oftentimes abominations are committed by sinful persons and brute beasts lie) without leave asked or obtained from the ordinaries of the places or any authority shown: wherefore we straitly forbid any things of this kind to be done henceforward on pain of suspension on persons and interdict on these same places, and also of excommunication if the persons committing such delinquencies when suitably warned do not desist from presumption of this kind; resolving and decreeing that rectors of parish churches and vicars of the same, as also parish priests, shall be entitled by the authority of the council to put such sentences into due execution within their parishes.<sup>1</sup>

(8) Of the good repute of the clergy.

We also ordain that every parish church have its own rector or vicar, who shall be in a position to discharge the cure of souls, either personally or by means of another suitable minister with the permission of his diocesan; and that these same clergy shall lead a pure and honourable life, or otherwise underlie canonical punishment.

(9) That vicars must have sufficient maintenance.

We further ordain that vicars of churches shall have a sufficient and respectable maintenance from the revenues of the churches, since they who serve the altars should live by them and from the incomes of the church: But so that the stipend of a vicar net and free, after all burdens have been deducted, shall amount at least to the value of ten merks<sup>2</sup> if the re-

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<sup>1</sup> John Major pointed out that the large size of the parishes in Scotland, and the great distance of many villages from their parish church, made it very usual for the neighbours to frequent, instead of the churches, the chapels of the lairds; for even the smallest proprietor, Major says (in the early part of the sixteenth century), kept a chaplain, sometimes more than one. And it would appear from this statute that laird and chaplain were not so careful as they should have been to see that the service was performed in a place consecrated to that purpose, and not put to domestic or even lower uses. Outhouses must have been at least occasionally utilised. The 'abominations' are probably those which, like bloodshed, required a church to be 'reconciled' (see Statute 164).

<sup>2</sup> In England at this time five marks was fair payment for a vicar; the 15th canon of the Council of Oxford in 1222 had fixed that sum as the minimum save for the poorer parts of Wales. Grosseteste was zealous in seeing that the possessors of the great tithes or impropriators, whether monasteries or others, should make in all cases such a fair allowance to the vicars, and not encroach

sources of the church shall suffice for this: It being understood that in wealthier benefices sufficient stipends be assigned to vicars in proportion to the resources of the churches and the burdens lying on them.

(10) Of clerical attire.

We further ordain that rectors and vicars of churches, as well these who are placed in dignities as priests and clerics in holy orders, shall be becomingly clothed—as in the bearing of their minds so also in their bodily attire. Let them not wear red or green or striped clothes nor clothes conspicuous for too great shortness. Let vicars also and priests have outermost garments without openings; let them wear the proper tonsure so that they may not offend the sight of the beholders, whose model and example they ought to be. But if after being warned by their ordinaries they will not amend their ways, let them be suspended from office and underlie ecclesiastical discipline.

(11) That none shall intrude into an ecclesiastical benefice.

We further ordain that no rector or vicar shall, without the consent of the diocesan or of his official having jurisdiction in this matter, intrude into an ecclesiastical possession or exercise any administrative function in the same. And whoso does otherwise ought according to the sanctions of the canons to lose the rights that belong to him; yet nevertheless let him be punished in some other lawful manner<sup>1</sup> at the discretion of his diocesan.

(12) Of the manses of beneficed clergy.

We likewise ordain that every church shall have a manse near the church in which the bishop or archdeacon can be comfortably accommodated; and we decree that such [manse] must be made within the year, at the cost as well of the parsons as of the vicars in proportion to their incomes from the parish. But the maintenance of the buildings pertains to the vicar since he has the use and accommodation of them; and to this let him be constrained by sequestration of the fruits of the churches.

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on it. Stephen Langton's *Constitutions* also insist that churches with not more than five marks shall not be given to any but strictly resident clergy. The Scots merk (13s. 4d. Scots) was at this time equal in value to the English mark.

<sup>1</sup> Not so severely, for the first offence at least.

- (13) That new assessments are not to be imposed on the church.

We likewise ordain that new assessments shall not be imposed on churches or vicars and that the old ones shall not be increased; and if the contrary takes place, then according to the Lateran Council let [such assessment] be null, and let the offenders in this regard be punished as may be just.

- (14) Of the ordination of clergy.

We further ordain that no bishop shall admit clerks to orders, especially to holy orders, from the diocese of another bishop, without letters from their ordinary or his official. And let no clerks passing [from one diocese to another] or unknown be admitted to any ecclesiastical office without commendatory letters; and if, without admission by bishop, official or archdeacon, they intermeddle with divine offices in parish churches or chapels, let them be *ipso facto* suspended.

- (15) [Of clerks going over to the monastic rule.]

We further ordain that any priest or clerk passing into a religious order shall have his year's income<sup>1</sup> exactly like others who die in the Lord.

- (16) Of the appointment of confessors.

Adopting the decision of a certain council, we ordain that throughout all deaneries prudent and faithful men shall by the bishop be appointed confessors, to whom the parsons, vicars and minor clerics (who perhaps are ashamed and afraid to confess to the deans) may be able to confess. But in cathedral churches we direct that general confessors be appointed.

- (17) Of letting and renting.

Since it is quite unseemly that churches should be granted in farm<sup>2</sup> to laymen; and since it might be a source of loss to

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<sup>1</sup> The *annuale* was variously reckoned. By a statute of a council at Rouen in 1190 it was decreed that a cleric dying after Easter should have the income due to the end of harvest. The Scots *annat* ultimately came to be the half-year's salary payable by law to the heirs of a deceased minister in addition to the regular stipend.

<sup>2</sup> Statutes 16, 17, and 18 are copied from those of the London Council of 1237. The provision against granting churches *in firmam* occurs in various statutes in the decrees of innumerable councils—a dozen or more between 1175 and 1250

churches [that such grants should be made] even to any clerics whatsoever for long periods, because of the lapse of time which is wont to bring risk : we strictly prohibit both the one and the other and ordain that grants in farm shall never be made to laymen nor even conferred on ecclesiastical persons for more than five years ; nor when that period is finished shall they be renewed to the same persons unless others have held them between times. Grants to the religious orders of rights over their sheaves for their own uses being however hereby left intact. And that all may be made secure we direct that the compact about such leases in farm be drawn up in presence of the bishops or archdeacons ; of which compact more than one copy shall be put in writing, whereof one shall remain with the bishop or with the archdeacon.

(18) Of the cohabitation of clerics and women.

Although the rulers of the church have always sought to drive far away from the homes of churchmen that filthy contagion of lustful naughtiness whereby the good fame of the church is shamefully discredited, yet that vice exists and in such wantonness that it always shamelessly reintroduces itself. Being therefore resolved not to pass over with conniving eyes and leave uncorrected so great a disgrace to the church ; giving effect to the statutes of the Roman pontiffs and specially the decretals of Pope Alexander<sup>1</sup> issued in regard to this subject ; we ordain and by our decree direct that clerics, and specially those in holy orders, who publicly in their own or other houses keep concubines shall be suspended from office and benefice, unless they utterly put them away from them within a month, promising in no wise to keep them or other [concubines] hereafter ; so that until they have made condign satisfaction on this head they shall in no wise intromit with their church benefices ; otherwise we declare them to be deprived of them

(see Hefele, *Conciliengeschichte*, vol v.). Sometimes other reasons are given against the practice : that it is a kind of speculative trade, in which clerics should not engage ; or that the person who takes over the revenues of a church or of church lands for a fixed payment (*in firmam*) hopes to have—and to keep to himself—an overplus, and in such a speculation may be tempted to exercise oppression in order to increase his gains.

<sup>1</sup> Pope Alexander II. (1061-1073) was especially strenuous in his measures against clerical marriage and concubinage.

*apso jure.* We resolve also and strictly enjoin that archdeacons and deans shall cause diligent inquiry to be made on this subject through all deaneries and see that what we have ordained thereanent is observed.

(19) That the possessions of the church may not be alienated.

We likewise ordain that the rectors or vicars of parish churches shall in no wise have the power to bond [to money payments] these churches committed to their charge nor to sell or in any way alienate the fruits of these for future periods, except in so far as they may be held to pertain to those rectors during their own lifetime and for their year's income;<sup>1</sup> lest by bonds and alienations of this kind loss or injury accrue to the churches themselves and their patrons or to the successors of their rectors.

(20) Item of the same.

We also ordain that no rector or vicar of a parish church shall be entitled to give, sell, or in any way alienate any tithes or other revenues of the church to persons related to him or not related to him, especially to laymen, even for so long as the grantors or the grantees shall live. And if any thing be presumptuously done to the contrary, let it be null and void; and whatever has so been alienated shall revert intact to the rights and property of its own church.

(21) Item of the same.

We add also that no rector or vicar shall presume by anticipation to grant a right of sale, bond, or any other kind of alienation upon tithes or other church incomes by as much as the space of a year before these tithes or incomes are due. And if anything is presumptuously done to the contrary let such contracts be void of all binding force; since by contracts of this kind the churches are injured, the rectors and vicars are impoverished, the sellers are also generally defrauded of their prices, and the rights also of the ordinaries are sometimes postponed or made utterly ineffective.

(22) That clerics and monks must not mix in business.

Since it is provided by divine and human law that no one

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<sup>1</sup> *Annuaire.* See note on Statute 15.



who is a soldier of God shall involve himself in secular business transactions, we ordain that no religious or priests or clerics attached to churches, which are sacred, shall be agents or administrators for secular persons in secular affairs, or shall undertake administrations from them in secular properties or businesses in respect of which they may be called to account; lest both they themselves to the scandal of the church be seriously oppressed by the civil power and the churches committed to their charge in this way incur loss to an excessive extent. Wherefore if in future any shall presume to run counter to this [statute] let them be deposed from their ministry, because disregarding their clerical office they have involved themselves in the waves of the world or with the secular authorities.

(23) Item of the same.

Likewise by a salutary provision we decree that beneficed clergy shall not in future presume to buy houses or lay properties for the use of concubines and their children; they must not build houses for their use on lay feus; nor shall they pay money for purchasing such for their use; that so the occasion of doing them an ill turn be taken away. If any one is on good grounds suspected in this regard, then unless he clear himself in the judgment of his superior, by his judgment let him be punished. Further although we agree that the lawful wills of beneficed clergy deceasing shall be given effect to, we resolve that they must leave nothing by will to their concubines; but if in future the like be done, let the whole of such sum be devoted at the discretion of the bishop to the use of the church over which the deceased presided.

(24) Of interdict.

Likewise since indulgence has been given by the apostolic see to the Hospitallers<sup>1</sup> and certain other religious orders, that on their welcome arrival in places under interdict, such places shall be open to them once in the year, on behalf of their confraternities or for collecting the alms of the faithful;

<sup>1</sup> Not, of course, the great military order of the Knights Hospitallers of St. John of Jerusalem (originally founded as Hospitallers in the fuller sense), but the members of various charitable brotherhoods, devoted to the care of the poor and the sick in hospitals, for the most part following the rule of St. Augustine.

we ordain that persons excommunicated by name<sup>1</sup> shall in no wise be admitted to the celebration of divine rites in places open under these conditions; and those especially who have given cause for the interdict in the matter of wills. We also prohibit those who enjoy such exemption from giving church burial to the bodies of persons excommunicated by name<sup>2</sup> or public robbers or violators of churches or other places, with whom when alive the church held no communion. But if they presume in any respect to contravene these premises, we declare them abusers of such privileges and [decree] that they be in no wise admitted to those churches until they have made suitable satisfaction for their offence; and [we ordain] that bodies so buried be removed from consecrated ground.

(25) Of testaments and last wills.

Inasmuch as a precise account should be rendered to the ordinaries of places with regard to the goods bequeathed by the testament of every one [dying]; since the Cistercians and the other exempt orders<sup>3</sup> can as they affirm be in no wise compelled to give such account, we ordain that members of such religious orders shall by no means be appointed executors or have any administration of the effects of deceased persons, and that if they be so appointed they be in all respects treated as not appointed.

(26) Of the immunity of churches.

We ordain also that those who flee to the church shall be protected by the church, unless they be such as have laid lands waste by night,<sup>4</sup> or are open and notorious highway

<sup>1</sup> See note on No. 26.

<sup>2</sup> See note I on p. 18.

<sup>3</sup> Exemption from the jurisdiction of the bishop of the diocese, so as to be subject to the Holy See directly, was a privilege conferred on certain persons as on certain monasteries. All religious were as a rule exempt as to property and the observance of their conventual rule, while non-exempt in respect of preaching and the sacraments. But the strong constitution bestowed by St. Stephen Harding, in 1119, on Cîteaux and its daughter houses ultimately led, contrary to his intention or St. Bernard's wishes, to a claim successfully maintained by the Cistercians and some other orders for exemption from all episcopal supervision in any real sense.

<sup>4</sup> The *depopulatores agrorum*, of whom we hear so much in the middle ages, deprived by English statute law in the sixteenth century of benefit of clergy, sanctuary, or Christian burial, were not so often or so much those who thievishly took the produce of other men's fields to eat or sell, as those who by mischievous

robbers, or undoubted profaners of churches or breakers into them, or persons who have been excommunicated either generally by canon law<sup>1</sup> or specifically by name. In which cases they are to be protected till the diocesan or his official shall have judicially pronounced that they are persons who ought not to be protected by the church.

(27) Item of the same.

And to this we add that no priest or vicar or any other cleric shall—without the command or knowledge of the bishop, archdeacon, or dean of the place where such demand is to be made—demand from the hands of lay bailies<sup>2</sup> any one bearing the sign of the cross<sup>3</sup> or cleric arrested for homicide, theft, or robbery, especially if they were in ill-repute for [having committed] these crimes. We also prohibit any lay cautioner from compearing before a lay bailie for the purpose of setting free such arrested persons; and we ordain that all who keep in ward such persons entitled to benefit of clergy shall, after they have been canonically warned and summoned, be compelled by ecclesiastical censure to set them at liberty, etc. etc.

(28) Of the same.

We also ordain that clerics in whatsoever orders are to be protected by the church until, if justice demand this on account of the heinousness of their crimes, they have been duly degraded from whatever orders they have received. And that offences may not go unpunished [we decree] that such

destruction glutted their malice or thirst for vengeance, or, by making farming industry impossible for poorer neighbours, drove them to resign their rights so as to be able to annex their farm lands or their share in common fields.

<sup>1</sup> To be excommunicated *a jure* or *a canone* is to be dealt with generally under some such category as 'all robbers' or 'all thieves'; when excommunicated *ab homine*, the offender was named by the proper authority, and the time, place, or manner of his offence might also be specified. The distinction is sometimes (see a canon of a London Council in 1138) between a general category and *ex nomine*: *Qui sciens communicaverit excommunicato, tanquam ex nomine excommunicatus habeatur*. *Nominatim excommunicatus* occurs above in No. 24. Compare the *personaliter* of No. 249; and compare No. 158. The law of sanctuary was a very troublesome one, and limitations had frequently to be enacted both by canon law and secular legislation.

<sup>2</sup> The bailie of a Scottish bailiary (unlike the modern English bailiff) was a *ballivus* in the old sense of the word.

<sup>3</sup> No. 31 deals also with Crusaders.

clerics taken in the act or openly convicted shall be committed to close custody in the diocesan prison, which every bishop is bound to have, and shall there be fed with the bread of sorrow and water of affliction, [but] so that they perish not of hunger or thirst in the prison.

(29) Of ferial days.<sup>1</sup>

We ordain also that henceforward secular courts shall on no account be held on Sundays or other solemn festivals, nor in churches, churchyards, or other places dedicated to God: Let not such courts—especially in matters of bloodshed or criminal cases—be conducted by any secular judges whatsoever in the aforesaid places and at the aforesaid times.

(30) That the liberties of the church are to be preserved from all encroachment.

We also ordain that it be permitted to none to infringe or diminish the liberties or immunities and reasonable privileges of things and persons ecclesiastical, as heretofore recognised and to the general advantage and for sound reasons established both by divine and human law.

(31) That Crusaders are to be defended by the church.

We also ordain by authority of the Lateran Council<sup>2</sup> that Crusaders are to be duly protected by the church, unless for the heinousness of their crimes they have been debarred from ecclesiastical protection. And on this head let the just judgment of the diocesan be in any wise awaited.

(32) That distresses are not to be taken by laics on church lands.

We further ordain that no sheriff, bailie or other lay person shall take by distress<sup>3</sup> or cause to be taken by distress

<sup>1</sup> The term 'ferial days' or 'ferial time' was taken over into Scots law to indicate days when the law-courts were closed, and legal process was invalid.

<sup>2</sup> By the 12th canon of the First Lateran (General) Council in 1123.

<sup>3</sup> *Namum capiat*.—*Namus* and *namum* were Scottish forms, *namium* the English form, of the mediæval law Latin term for goods seized by way of distraint; as *nam* was Anglo-Saxon and *nam* or *name* the middle English—derived from A.-S. *niman*, to take. *Nam* long survived in the famous law term *withernam* ('illegal distraint'). Sir Henry Maine in his *History of Institutions* refers repeatedly to the 'taking of nams' as the old phrase for distraint. The

in court or out of court any of the goods of a cleric or even of a layman settled on church lands, or shall cause [such goods] to be sold at the valuation commonly called *for-le-rei*.<sup>1</sup> But if it be done to the contrary of this; if he that has taken or caused to be taken by distress, on being warned, does not within the time appointed restore the goods thus taken or sold and further declines to give satisfaction for the offence, let him without loss of time be compelled by sentence of excommunication or interdict as shall seem most expedient.

(33) That a cleric must not be haled before a secular court.

We further ordain that if a clerical person raises a personal or real suit against another ecclesiastical person in regard to ecclesiastical property or goods whatever, let him sue the other before an ecclesiastical judge, on no account dragging his opponent before a forbidden court. But if any one shall presume to contravene this, if when admonished in terms of the canon he do not desist, then in the case of a pursuer let him lose whatever claim he has in the matter, and in the case of a defender (if he be a consenting party to the proceedings) let him be held as convicted. And if nevertheless they persist further, and disregard the penalties specified; let them be publicly denounced excommunicate persons according to the sacred canons and by the authority of the council.

Furthermore since those who attack or disturb the immunities, liberties, and possessions of the church, as well

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Scottish kings frequently showed their favour to monasteries by formally exempting them from distraint save for their corporate debt. Dunfermline, Holyrood, Scone, and St. Andrews were all thus favoured, as may be seen in Sir A. C. Lawrie's *Early Scottish Charters* (1905).

<sup>1</sup> Dr. Robertson printed the word *forlerei* as one word, and was puzzled by it. In the *Aberdeen Register*, following its own MS., it is spelt *for le Ray*. I am indebted to Dr. Maitland Thomson for the luminous suggestion that it is simply *for le rei*, *for le rey*, 'the king's price.' Or it may be contracted for *forfeit le rey* or *forfaiture le rey*—a phrase which, like the corresponding *in forisfacto regis*, is found in Thorpe's *Ancient Laws and Institutes of England* (1840); the meaning being at the valuation commonly called 'the king's forfeit.' The Scottish fathers were probably following an enactment originally passed in England, where Norman-French was actually the legal idiom.



as they also who disturb the peace by any kind of cheatery, spite, or intrigue are in virtue of sentence passed<sup>1</sup> *ipso facto* excommunicated by the canon; by the authority of those same canons and of this council we decree that [such persons] ought to be publicly denounced excommunicate.

(34) Of tithes and first-fruits.

In accordance with the precepts of divine and human law we ordain that of all things that are renewed [annually],<sup>2</sup> namely of corn, hay, lint; of gardens; of mills; of fishings; of the young of animals, wool, milk, cheeses at whatever season they are made, butter, fowls, eggs, peats, coppice wood;<sup>3</sup> of the fruits of trees, trading, hunting, hawking, and other such matters, tithes be paid in full to those to whom they are known to belong, even if on some such things tithes have not heretofore been paid.

(35) Of the tithes of gardens.

We decree further that the tithes of gardens in cities and burghs, for whatever kind of crop they are used, shall belong to the vicar's part. But the tithes of gardens in villages in so far as they are used for corn crops shall belong to the rector, and for the rest to the vicar; but let [the tithe of] flax wherever it is sown belong to the vicar.

(36) Of the tithes of cows.

Further as to cows that have recently calved<sup>4</sup> we ordain, if neither cheese nor butter is made of their milk, that for a cow three pennies per annum, and for its calf one penny in the same year be uplifted as tithe.

(37) Of the tithes of sheep.

Likewise we ordain as to sheep that if sheep or other animals fatten in different parishes for various lengths of time, let each parish take tithe in proportion to the time; provided however that they shall have been in any parish for

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<sup>1</sup> See note 1 on page 18.

<sup>2</sup> Crops, wool, etc., are renewed annually.

<sup>3</sup> *Silva cedua* is coppice wood under twenty years' growth, according to Cowell's *Law Dictionary* (1708); Du Cange seems to indicate 'felled timber.'

<sup>4</sup> *Vaccis fetis*.

a whole month at least. Let no account be taken of a shorter time. And we should receive of the fruits [of the sheep] for the whole of the time during which they are cared for, not merely for the time during which they are realised.<sup>1</sup> And let the same rule hold as between several bishoprics.

(38) Of the same.

We likewise ordain that if a parishioner of any church remain with his cattle<sup>2</sup> in any parish a month or more for the sake of the pasture, the same rule shall apply as has above been laid down in regard to sheep.

(39) Of the same.

We ordain that if any one stays in one parish and has bought breeding ewes in another parish and has removed them to where he stays in the first parish, let him pay the full tithe for them, as also for all their fruits, namely their wool, lambs, and milk, to his own parish church; and let the vicar of the same reckon with the vicar of the parish whence they were brought, and make him payment, sharing according to the months; and if he do contrariwise, let him be compelled by church censure.

(40) Of animals which lie at night in one parish and feed in another.

We further ordain that of animals which lie in one parish and pasture in another the whole year through, the tithes shall be equally divided. But if they feed in both parishes in common and sleep only in one, let that parish in which they sleep receive three fourths, and let a fourth go to the church in whose parish they [only] pasture.

(41) Of the tithe of hay and of mills.

We likewise ordain as to the tithes of hay and of mills that they be paid in full; and whosoever will not pay them, let him after a third warning be excommunicated.

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<sup>1</sup> *Toto tempore quo curantur, non quo percipiuntur.* While the value of the sheep is being carefully increased, not merely while they are an actual source of revenue.

<sup>2</sup> *Cum suis averiis.*

## (42) Of hired labourers.

We likewise ordain that from labourers who contract to give their services at half a mark and less, it suffices to demand three oblations annually by way of tithe on the wages they receive.

## (43) Of the tithe of fishings.

Further as to tithes of fishings we ordain that no parson or vicar shall presume to demand tithes of fishings from other churchmen's parishioners, unless so long as they rent houses in his parish or when they have erected huts to live in [there] or occupy by way of borrowing and lending [such huts in that parish]; or unless [the tithe] have been otherwise provided for by some lawful arrangement between the churches.

## (44) Cases in which those persons are excommunicated who hinder ecclesiastical personages or their agents from taking full advantage of their tithes.

We further ordain that neither patrons<sup>1</sup> of churches nor any lay persons shall obstruct or prevent or in any way hinder parsons or vicars or their agents from being free to dispose of their own or their masters' tithes, to sell them or alienate them in any way they think fit; nor forbid their own or other people's dependants from buying tithes or other revenues; nor put any obstacle in the way of clerics collecting these for their own use, and disposing of them at their own discretion. But if any one presume to do contrariwise, or devise anything to the detriment of the liberty of the church and of the sacred canons, let him be excommunicated by authority of the General Council.<sup>2</sup>

## (45) Of them who scatter tithe sheaves about the fields.

We further ordain that whatever sons of perdition shall

<sup>1</sup> *Advocati ecclesiarum*, a term applied both to the 'advocates and patrons of the presentation and advowson' (Cowell), and to princes, nobles, or principal laymen who, especially from the ninth to the thirteenth century, were looked to by churches and monasteries to defend the property and lives of those connected with them, receiving frequently regular payment on the usufruct of church lands. The 45th canon of the Fourth Lateran Council was designed to guard against *patroni* and *advocati* of churches and *vice domini* imposing burdens on the churches under their protection. The 'advocates' of Statute 233, etc., are of course clerics practising as advocates in the courts.

<sup>2</sup> As was duly provided for in the forms of excommunication at pp. 4, 5.

privily carry off or take by force or stealth tithe sheaves, or leave tithe sheaves standing cut on the fields, or scatter them about the fields, or refuse to carry them to the granges according to reasonable and ancient custom, shall by ecclesiastical censure be legally compelled to make satisfaction to God and the church and the aggrieved or injured clerics.

(46) Of the same.

We further ordain that these decrees be published on three solemn days every year in every church of each of the dioceses pertaining to us.

(47) Of plotters.

We excommunicate also all who plot against their own bishops or the other bishops of the realm or other prelates, and all who abet such plotters; inasmuch as all such are schismatics and infamous.

(48) Of the obedience of churchmen.

Since 'to obey is better than sacrifice' and contumacy or disobedience is compared to the sin of witchcraft and idolatry;<sup>1</sup> we ordain that all ecclesiastical men who contumaciously and without reasonable cause resist their diocesans, archdeacons, or deans in lawful and canonical commands, be suspended from office and, if the contumacy is aggravated, be subjected to a graver punishment.

(49) Of pardoners:<sup>2</sup> that they be not admitted [to the churches] but once in a year.

Since certain pardoners lead astray the minds of the simple people by illusive statements of various kinds: we ordain that when any pardoner comes to a church, he that is officiating in that church on that day shall reverently explain to his parishioners the mission of the said pardoner, according to what is contained in the letter [he brings] from our Lord the Pope and the ordinary, so that he may in no wise exceed the tenor of the said letter. But let him on no pretext allow the said pardoner to come within the same church on the same business on any other day within that year.

<sup>1</sup> 1 Sam. xv. 22, 23.

<sup>2</sup> The *Quaestionarius*, questor or pardoner, might be appointed by Pope or bishop to grant indulgences on the gift of alms to the church.

In addition to this we ordain, as a thing to be steadily kept in view, that from the beginning of Lent until the Octave of Easter the scheme for the building of the Glasgow church<sup>1</sup> be on all Sundays and feast days faithfully and earnestly brought before the parishioners in every church after the gospel at mass; and that an indulgence be granted to those who contribute to this building-scheme: which [indulgence] we direct to be exhibited in writing in every church; let it be publicly and distinctly recited to the parishioners in the vulgar tongue; and let their contributions and the effects of persons dying intestate and also [moneys] piously bequeathed, according to the practice heretofore approved, be faithfully collected, and made over without deductions to the deans of the places at their next chapter-meetings. And let no one authorise a collection in parish churches for any other scheme within the period specified.

(50) That those who overthrow the liberties of the church are to be excommunicated.

With regard to prelates and clerics serving the church for stipends who give encouragement and support to laymen in opposition to the canonical prescriptions and ecclesiastical liberties and customs hitherto obtaining in the Scottish church; and especially with regard to those who dictate, write or sign letters or enact statutes, by which the rights and statutes or liberties of the church, or its privileges in this sort may be subverted, and with regard to others, namely magistrates<sup>2</sup> and councillors [who do the like] and their abettors: it is statute and ordained by us that, since all such fall within the scope of sentence already promulgated, they be publicly denounced as excommunicate.

But if in future any beneficed person be found guilty under any of the above-specified heads, let him know that in virtue of this statute he is to be deprived of his benefice. If any one enjoying [ecclesiastical] dignity or high office presume to

<sup>1</sup> The existing Glasgow Cathedral was built at various periods from the twelfth to the fourteenth century. Dr. Robertson concludes that the authorisation concerns the building of the choir, still used as the High Church, under Bishop William of Bondington in 1233-1258.

<sup>2</sup> *Statuarii*.



offend in this sort, let him be held to have lost all such dignity and honours. If he be a layman and holding a fief of the church, let him be deprived of his fief. If a cleric presume to do any of the things referred to and is subsequently presented to a benefice, let him on no account be admitted unless he have first canonically proved that he is no longer culpable in this regard before the diocesan of the place.

(51) The underwritten are to be excommunicated four times a year.

Likewise we decree that in all churches as well in the chapels of knights as of others four times a year on the Sundays next the fast of the Ember Days<sup>1</sup> all fortune tellers, or witches male and female, incendiaries, violators of churches, forgers, notorious usurers, and all who raise obstacles against wills legally executed shall be collectively excommunicated; as also all who hinder the ordinaries from administering in proper form the goods of those who die intestate, according to the custom of the Scottish church; laymen who withhold, interfere with, diminish or take away property or other rights and privileges belonging to the church; all who intrude themselves into an ecclesiastical benefice; and witnesses deliberately perjuring themselves, by whose fault anybody loses inheritance or benefice lay or ecclesiastical; also open and notorious robbers; and all who knowingly harbour thieves or robbers so that they go on thieving and robbing, or who support them or give security for them when they are called in question for the said offences.

Against the crimes of robbers and reivers, of whom Scottish territory<sup>2</sup> is too full—crimes that would be to no purpose, as we have been given to understand, unless greater persons defended and maintained the offenders and knowingly and deliberately gave security for them; therefore we have thought well to decree that nobody shall shelter, support or defend them or keep in their houses or castles those whom they

<sup>1</sup> The Ember Days, or Quatuor Tempora. See Statute 165.

<sup>2</sup> This whole paragraph on robbers and reivers is copied from the constitutions of the council of London under the legate Otho in 1237: save that the original '*regio Anglicana*' is adapted to the purpose by simply substituting '*regio Scoticana*.'

know, or have good reason to believe, to be addicted to robbery and reiving. Now those who do contrariwise, if after being a third time admonished by the ecclesiastical judge they do not dismiss the offenders, we subject to ecclesiastical excommunication. And we will and decree that a general admonition shall suffice, even though given without the mention of any name, provided only it be given so publicly and solemnly that it may reach their knowledge [*i.e.* of those who maintain the robbers].

Also all who in a matrimonial cause maliciously raise false objections, or procure them to be made, or who in a matrimonial cause knowingly bear false witness or procure it to be borne or suborn witnesses—let them know that they underlie sentence of excommunication.

(52) Of the same.

We likewise excommunicate all those who disturb the peace of the king or the kingdom, and all those who through hatred or for the sake of gain bring false charges against others, for which if they [*i.e.* the victims] should be judicially found guilty the penalty would be death or exile or the mutilation of members or disinheritance or the loss of goods.

(53) That a person excommunicated by one bishop must be denounced by other bishops; and that an interdict must be published upon the lands of the excommunicated person if he persist in his obstinacy for forty days; and of the penalty on prelates who do not follow these ordinances.

We resolve also that as often as any one of us bishops shall for any reasonable and lawful cause proclaim sentence of excommunication against anybody subject to us in right of the diocese, and shall demand of any of us that the said sentence be published and proclaimed; every one of our number shall cause the same to be published throughout his diocese, and proclaim the said offender excommunicated and each of us personally shall avoid him as excommunicated, and as far as lies in the power of each secure that he be avoided by other persons. And if such excommunicated person, with obdurate mind, despising the keys of the church, persist in obstinacy for forty

days: and if the excommunicating bishop shall from that date subject to ecclesiastical interdict the lands of the excommunicated person and the places through which he shall have passed and in which he shall have made a stay of three days or more, and shall demand that the same interdict be published by any of us; every one of our number shall in like manner subject to interdict the lands of that excommunicated person situated in his diocese, in as full extent as the said sentences were issued by the original excommunicator. He shall also put under ecclesiastical interdict the places through which the excommunicated person has passed and for as long as he shall stay in them. But that the honour that is owing to the king's majesty be shown: if the excommunicated person shall be in attendance on our lord the king, or on the royal consort, or on the general convention of the nobles of the said kingdom, then must the diocesan of that place, personally or by delegate, denounce such one as excommunicated and by lawful means persuade them to repel the said excommunicated man from their society and to avoid him and cause him to be avoided by their dependants. But since they must be held to favour open crime who neglect to prevent it: let the place where such excommunicated person has made any stay be subjected to ecclesiastical interdict by the diocesan; excepted only the chapels of the king and the queen and their children, which must enjoy their dignity intact. And that the fear of God may be enforced on those who are too obstinate, and for the suppression of the insolence of excommunicated persons, then if it be necessary let the assistance of the secular arm be invoked as it has been wont to be in the times of the Catholic kings and as of right it ought to be. And if any of our number shall from any inadvertence forbear this ecclesiastical and sacred duty or in any way hinder it, then by the finding of the sacred council let him be deprived of the counsels of his brethren and of the other prelates.

(54) Of the penalty for incest of clergy.

If any priest commit fornication with his spiritual daughter, let him understand that he has committed gross adultery; therefore if it be a lay woman, let her resign all she has and

give her goods to the poor, and having repaired to a nunnery let her serve God there until her death. A bishop or priest ought not to have connexion with the women who have confessed their sins to them; but if (which may God avert!) such a case does befall, let him do penance as for [sinning] with his spiritual daughter. Let a bishop do penance for fifteen years, a priest for twelve years; and furthermore let him be deposed if the thing come to the knowledge of the people.

(55) That absolution from excommunication must not be extorted by lay persons.

Since no power of disposing of ecclesiastical things or persons is conferred on laymen, with whom rests the duty of obedience, not authority to command; we—in order to extirpate an abuse of established usage which has lately sprung up to the subversion of the liberty of the church, through which the spiritual sword and the keys of the church are made subject to the material sword—have thought it necessary to decree that no one at the head of a jurisdiction shall henceforward presume to relax at command of any secular power any sentence of excommunication, interdict, or suspension that has for any reason been passed on persons subject [to that jurisdiction]. But if the secular power, persisting in its pertinacity, compel any one to relax sentences by [meddling with] the possessions movable or immovable of the church or in any other way; then let the diocesan of the place by authority of canon and council punish the person who thus offends.

[Synodal Statutes of the Diocese of Aberdeen,  
XIIIth Century.]

(56) Of Baptism.

Since baptism is the first plank<sup>1</sup> for men to cling to after shipwreck: and great is the virtue and efficacy of this sacrament, inasmuch as it was instituted by God himself and confirmed by his blood; we prescribe that this sacrament be celebrated with honour and reverence and with great care, especially in the distinct utterance of the words in which lies the whole virtue of this sacrament, and the salvation of the children. Now the form for baptizing is this: I BAPTIZE THEE IN THE NAME OF THE FATHER AND OF THE SON AND OF THE HOLY GHOST, AMEN. But let priests teach that laymen frequently may and ought to baptize children in extremity according to this form in the Roman or even the English<sup>2</sup> tongue. And let the father and mother baptize

<sup>1</sup> The plank on which a shipwrecked person reaches the shore was early utilised as a theological symbol. A note in Lyndwood's *Provinciale* defines baptism more fully as 'the first plank by which we escape from the shipwreck of original sin. The second plank is penance, by means of which those who have fallen after baptism escape from the shipwreck of actual sin' (*De Poenitentiis*, lib. v. tit. 16). The phrase often occurs in English statutes both on baptism and on penance.

<sup>2</sup> The statutes of the council of Durham (1228, from which if not from the constitutions of Sarum a little earlier, this and the following six statutes are mainly taken) enjoin priests to instruct their people that in necessity they may—and ought—to baptize their own children, making sure that they use the orthodox formula 'in Romano vel Gallico.' And when the priest is inquiring after the event how any particular lay baptism was performed, with a view to the formal completion of the rite (if need be), he is to approve the baptism if he can satisfy himself that the layman 'distincte et in forma ecclesie baptisasse in Latino sive in Gallico sive in Anglico'; otherwise he must re-baptize as prescribed. It is highly significant that while Gaelic was the vernacular of almost all Scotland north of the Forth and Clyde, as well as in Galloway and Carrick, a northern Scottish Synod should have taken no account of Gaelic in this connection, and recognised only Latin and English—English here being of course northern English or Lowland Scots. In Buchan Gaelic was the vernacular in the twelfth century, and 'probably much later,' according to Professor Mackinnon, not to speak of the Highland parts of Aberdeenshire and the Aberdeen diocese: yet so



their child in extremity when other persons are not available and [let them do so] without prejudice to their matrimonial relation.<sup>1</sup> Let the fonts be kept fastened with a lock. Let the chrism and the sacred oil and the eucharist be kept under lock and key. But if they whose business it is to take charge of them leave them carelessly unprotected, let them be suspended from office for three months; and if through their carelessness any sacrilege have come about, let them underlie a severer punishment. Let there be provided in every baptismal church a suitable stone or wooden font, which may be decently covered over and reverently kept and not applied to other uses. Let the water in which a child has been baptized not be kept in the font beyond seven days. But if a child has been baptized by a layman at home, let the water, out of reverence for baptism, be either poured into the fire, or carried to the church so as to be poured into the font. Also let the vessel in which the child was baptized be either burned in the fire or devoted to the uses of the church. Now when a layman has baptized a child in extremity, let the priest afterwards diligently inquire of him what he said and what he did, and if he finds that the layman has baptized discreetly and according to the form of the church in whichever language, let him approve what has been done. But if otherwise, let the priest himself baptize the child by saying: N. ; I BAPTIZE THEE NOT IF THOU ART BAPTIZED, BUT IF THOU ART NOT BAPTIZED I BAPTIZE THEE IN THE NAME OF THE FATHER AND OF THE SON AND OF THE HOLY GHOST, AMEN. According to that form let the children be baptized, in regard to whom it is doubtful whether they have been baptized. But when an

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little did the Catholic church as reconstituted in the twelfth century cherish the old Scottish tradition or the Gaelic connection, so essentially did it associate itself with the church in England, that the bishops and clergy of the Aberdeen diocese must apparently have refused to recognise baptism by parents—the vast majority, presumably, in these northern parts—who were unable to understand the two foreign languages which alone the church in Scotland regarded as valid for this purpose.

<sup>1</sup> The fact that baptism created a spiritual relationship or kindred between the sponsors, which was an absolute barrier to marriage, would naturally suggest this difficulty; the clause 'sine prejudicio matrimonii' or 'absque prejudicio matrimonii' occurs in the canons of various councils—that of London in 1199, as well as that of Durham (1228, from which this is apparently taken).

infant has been baptized by a layman, the child having been brought to the doors of the church, let that which is lacking be supplied by the priest, namely a little salt and the anointing of ears and nostrils with spittle; let the exorcisms also be said; and let all things be done to the child beside the font that are wont to be done except the immersion and the blessing of the water. But when a child is baptized as to whom it is doubtful if he has been baptized before, let everything be done by the priest, only before the immersion let the above-mentioned words be said, I BAPTIZE THEE NOT, etc. For raising the child from the font, let three persons at most be admitted in baptisms; let two men and one woman receive a male child, but let a female child be received by two women and one man. But let more [than that number] be present, if they may be had, as witnesses not as god-parents, for various reasons. Let the chrismal cloths not be put to any other uses than as ornaments for the church; and once they have been brought to the church with the children, let them not be lent to others to baptize in for love or money. So likewise let other ornaments which have received pontifical benediction be in no respect put to profane uses. Let women be admonished to nurture their children with care and not to keep them when very young beside themselves during the night, lest they be smothered [by overlying]; let them not leave them alone in houses where there is a fire, nor leave them alone near water: and let this be insisted on every Lord's Day.

(57) Of the sacrament of confirmation.

Since the sacrament of confirmation is given to children for their strengthening, let the priests when they hear of the coming of the bishop warn the people to bring the children to the bishop to be confirmed. But an adult if he have time for confessing should confess before being confirmed. And let this be intimated to the laity, that in this sacrament as in the sacrament of baptism a spiritual kinship is established between those who are god-parents of the children and those whose children they are, and the [other] children also of those persons. Let a male present a male before the bishop, and a female a female.

(58) Of the sacrament of penance.

Since by true confession we obtain remission of sins, we ordain that priests in giving a penance shall diligently consider the amount of the penance and the quality of the offence, the place, the time, the cause, the length of continuance in sin, and other circumstances of the sin; likewise let them consider the devoutness of the penitent and the signs of contrition. In hearing confession let the priest have a humble countenance and his eyes cast down to the ground, nor let him too often indiscreetly look in the face of the person making confession, and especially if it be a woman; and let him patiently hear what [the penitent] says and assist him [or her] in a spirit of lenity, and to the best of his ability and in various ways persuade him [or her] to repent and make confession completely and of all his [or her] sins, else the confession is not a true one. Let him make inquiry about common sins one by one, but about unusual ones only in a roundabout manner and by circumstance, that so to those who have experience [of the offence] material for confession may be provided and to those who have not that experience no occasion for offending be suggested. Let the priest not ask the names of the persons with whom the penitent has sinned, but in the course of the confession he may ask whether [the party was] a layman or a cleric, priest, deacon, or monk. Let laymen be admonished to confess at the beginning of Lent, and straightway after an offence. Let him [the priest] instruct his parishioners that as soon as they have come to years of discretion they shall confess all their sins once a year to their own priest or to another by his licence; and let them reverently receive the sacrament of the Eucharist at least at Easter, unless perchance by the advice of their own priest they think it proper to abstain for a time from receiving it for some reasonable cause; otherwise let them while living be debarred from entering the church and when dead be without Christian burial. But let the priest be very careful that he neither by word nor sign nor in any way betray the offender; and if he stand in need of more experienced counsel, let him cautiously seek it without any indication of the person. And in doubtful cases, let him always consult the bishop or discreet men,

fortified by whose advice he may more confidently loose or bind.

(59) Of the sacrament of the eucharist.

Let the most excellent sacrament of the body and blood of the Lord be handled with reverence, devoutness, and honour ; and for this cause we straitly insist that as concerning the things that pertain to the substance of the sacrament of the body and blood of the Lord, priests shall diligently see to it that the eucharist be kept in a clean pyx ; nor let consecrated hosts be kept beyond seven days, but each Lord's day let them be renewed, so that the hosts that have [till then] been reserved be consumed by him who is celebrating mass after receiving a host newly consecrated, and before partaking of the blood of the Lord, or by any one of a good conscience ; and as to the consecrated host, let there be security that an unconsecrated one be not taken in place of a consecrated one, and that a consecrated one be not consecrated over again. And let the priest who is to administer diligently see to it that the host is made of pure wheat, and is whole and have its circular form complete, and that a larger proportion of wine and such a moderate proportion of water as may be absorbed by the wine be put into the chalice. Let him take care that the wine be not turned to vinegar or mouldy. Likewise we command that priests have the canon [of the mass] in correct form, and that the words of the canon be pronounced with a full and distinct voice. Let all the hours and all the offices be spoken audibly and distinctly, so that the words be not cut short or slurred over by too great haste.

(60) Of the celebration of masses.<sup>1</sup>

Further, in the celebration of mass, let the priest who is to

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<sup>1</sup> Dr. Robertson holds that this, like the four preceding statutes, is taken from the Sarum Constitutions or the Durham Statutes (1222-1228; see Introduction); but in some points it agrees more closely with the constitutions of St. Edmund of Canterbury in 1236. From all it is plain that though the use of the osculatorium, a plate with a figure of Christ, had taken the place of the old form of giving the kiss of peace, the usage was not uniform ; and that it had been not unusual for the priest to give the *pax* to himself (*pacem daturus sacerdos sibimet-ipsi*, Canterbury Constitutions) by kissing the host upon the paten. The next part of the rule concerns the priest's own communion : some priests took the

give the kiss of peace not bring the consecrated host in contact with his mouth, because before the reception he must not touch it with his mouth. But if as some do he takes it direct from the paten, let him after the celebration of mass cause both paten and chalice to be rinsed with water, or the chalice alone, if he does not take it [the host] from the paten. And let the priest have beside the altar a perfectly clean cloth completely wrapped up in another cloth, and reverently and decently covered, with which after reception of the saving sacrament he may wipe fingers and lips after the ablution; and let the sacrarium<sup>1</sup> have upon it a proper door. Let him not elevate the host before those words are pronounced: 'This is my body.' Further, if for any reason the priest find it necessary to celebrate twice in one day—a thing we forbid to be done except on the day of the Nativity or of the Resurrection of our Lord, or when a body to be buried is present in the church, or when there is some obvious and urgent necessity—after the first celebration and reception of the body and blood let nothing be poured into the chalice for the priest to take, but only after the subsequent celebration. But after the first celebration let the drops from the chalice be carefully swallowed, and let what remains over in the chalice be taken with the fingers by some one of good conscience; or let it be reserved in a vessel specially set apart for that purpose, and after the celebration of the second mass let it be taken by the priest.

(61) Of the keeping of the eucharist and the visitation of the sick.

To this we add that when the eucharist is to be carried to a sick person the priest shall have a clean pyx in which is a perfectly clean burse, and in that let him carry the Lord's body to the sick man, a clean linen cloth being laid over it, and a lantern going before and a bell at whose sound the devotion of the faithful may be awakened, unless the sick

host from the paten with their lips, without help of their fingers. The host was often placed not on the paten, but on the corporal. The English originals have *quidam* for the impossible *quidem* of our text.

<sup>1</sup> Here a locked repository or ambry for the eucharist, the holy oil, the chrism, and the sacred vessels. See Statute 110.



person live at a very great distance. And let the priest have a stole when he [thus] goes to the sick ; and if the sick person be not far away, let him go to him decorously in his surplice if the state of the weather permit.<sup>1</sup> And let him have a vessel of silver or pewter set apart specially for the purpose to carry with him to the sick man, in order that after the reception of the eucharist he may in it give the sick person the water in which he [*i.e.* the priest] has laved his fingers. And let the priest bear the Lord's body reverently in front of his breast.

(62) Of extreme unction.

Let priests diligently exhort sick parishioners from the age of fourteen years and upwards to extreme unction, and let them administer this sacrament gratis and freely to all who ask it and are penitent. Further, let them explain to them that this sacrament may be repeated, namely, in whatever sickness fear of death is entertained, and that after this sacrament it is lawful to return to the conjugal relation and to other lawful acts as before. And let the oil of the sick be borne with reverence to the sick persons, and let the priest anoint them with solemnity and with the offering of the prayers which are appointed for this purpose. And let nothing be demanded as payment for this or for the other sacraments.

(63) Of the life and good name of clerics.

In order that the behaviour and morals of clerics be reformed for the better, let them all, especially such as are in holy orders, study to live continently and chastely, guarding against every lustful vice. Let all clerics diligently abstain from surfeiting<sup>2</sup> and drunkenness. Let them not engage in secular businesses, particularly such as are discreditable. Let them wholly avoid taverns, unless happening to be on a journey they are driven thither by necessity. Let them have the proper coronal and tonsure. Let priests wear closed

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<sup>1</sup> See note to Statute 117 below.

<sup>2</sup> *Crapulis*, here not for tippling, but surfeiting, as in Vulgate at Luke xxi. 34 : *in crapulis et ebrietate*.

cloaks,<sup>1</sup> unless just cause of apprehension<sup>2</sup> constrain them to alter or modify their costume. But let other clerics bear themselves creditably in dress, in carriage, and in all things. Let them wholly withdraw from all persons specified at the General Council.<sup>3</sup> But we straitly charge priests especially and beneficed persons to live continently and respectably, on peril of [losing] their offices and benefices. Let them send far away from them their concubines, and let them henceforward have no familiarity with them either in their own houses or other people's, unless they are prepared by acting contrariwise to be deprived of offices and benefices. And we charge advocates if they are clerks in holy orders or priests not to mix themselves up with secular courts unless they are defending their own causes or those of miserable [and otherwise undefended] persons, but to exercise themselves diligently in their ecclesiastical callings, in divine and other good studies. Let them zealously and devoutly celebrate as far as God shall enable them the nightly divine office as regularly as the daily one. We further ordain that every church have a silver chalice, with becoming and creditable vessels; a linen cloth,<sup>4</sup> clean and white, of suitable size. Let them have proper linen cloths and all other ornaments that pertain to the service of the altar, and proper books for chanting and for reading, and sacerdotal vestments both sufficient and creditable. And because it is too absurd to overlook in sacred things nastiness which would be disgraceful in profane things,

<sup>1</sup> The *cappa clausa* was a cloak covering the whole person, usually having only one short, narrow slit in the middle of the breast, through which a hand could be thrust. This cloak would make self-defence, especially with a weapon, impossible.

<sup>2</sup> Dr. Robertson's text reads *justicia timoris*. But in the decrees of the Oxford Council of 1222 we have the usual *justa causa timoris*; in the corresponding Durham decree *justi causa timoris*. The form in the Scottish Statutes is obviously due to mistranscription. The modern English legal equivalent 'reasonable apprehension of violence' was used in connection with the report of the Royal Commission on Trade Disputes, 1906.

<sup>3</sup> The Scottish statute is taken partly from the 14th, 15th, and 16th canons of the Fourth Lateran Council: the 'persons specified' are doubtless unchaste women. Dr. Robertson compares the Scottish Statute 18 above and that of the Council of London in 1237 from which it is borrowed.

<sup>4</sup> *Sindon*, a linen cloth for the altar. For the word, see Vulgate, Mark xv. 46, Luke xxiii. 53; for the prescription, a canon of the Oxford Council of 1222.

we straitly charge them to see that the vessels of the service and the vestments of the ministrants, and the palls of the altar as well as the corporals also, be kept white and clean, lest through the carelessness of some, because of the nastiness or dirtiness of the vestments, they be an object of horror to some persons. Also, every year let an Easter candle be made of new wax, and let the wax of which the candle was made be after Whitsunday devoted to the uses of the church and not removed thence.

(64) What things are to be left to a successor in office.

Furthermore, with the approval of the holy synod we ordain that if the rector of any church die, and his church be left without suitable sacerdotal vestments or without books or without both; or if he have left the houses belonging to the church<sup>1</sup> dilapidated or ruinous; let as much be deducted from his ecclesiastical belongings as may suffice to repair these and make good what is lacking to the church. Let him also leave to his successor the utensils of the house.

(65) That new assessments are not to be imposed on the church.

As was ordained in the General Council,<sup>2</sup> we positively prohibit the imposition of new assessments on churches; nor let old ones be increased; and as was provided in the General Council, let whatever is done to the contrary be held void and of no effect. And let presentees understand that they must in future swear that there is no promise or compact between them and the patrons presenting them in order to secure the benefice, and especially as regards an increase of allowance [to the patrons].

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<sup>1</sup> *Domus ecclesiae*, the manse and outbuildings.

<sup>2</sup> Dr. Robertson thought that 'General Council' here referred to the Scottish Provincial Council and its 13th Statute above: rather improbably, for the Scottish fathers here quote verbatim the title of the 7th canon of the Third Lateran Council of 1179. The latter part on the other hand seems to be based on the 28th constitution of St. Edmund of Canterbury (1236), which forbids presentees to make simoniacal compacts with the patrons or presenters, or to promise them any higher *pensio* from church funds than had been heretofore usual in such cases.

(66) Of marriage.

Since we know that marriage was instituted by God himself in Paradise, and as regards its origin is the first amongst all the sacraments; in order that hereafter it may be more freely and lawfully contracted, we ordain that no promise of marriage to be contracted be made to any one save in presence of the priest and of three or four trustworthy witnesses summoned together for the express purpose. Let no priest presume to unite in marriage any persons unless a thrice-repeated proclamation, according to the form prescribed by the General Council,<sup>1</sup> have previously been publicly and solemnly made in church, so that any one who will and can may state a legal impediment. And let priests proclaim that on pain of excommunication no one shall in malice conceal impediments to marriage, and that no one shall maliciously offer impediments to marriage. Let the said priest himself over and above investigate whether any impediment exist, and if there seems to be a probable presumption against contracting the marriage, let the union be expressly interdicted until it shall appear on clear evidence what ought to be done about the matter. We also forbid the clandestine contracting of marriages, and ordain that no priest shall presume to have anything to do with such marriages, and let him who does contrariwise be canonically punished. And let priests intimate to their parishioners that marriage is prohibited within the fourth degree of consanguinity or affinity; beyond the fourth degree it is legally contracted. We interdict marriage between godfathers and godmothers, and between a son and daughter [of godparents], and between a godchild male or female and a son or daughter of a godparent. We decree also that clergy compel their parishioners who have notoriously committed fornication to contract marriage with their paramours or absolutely to repudiate them without conditions added.

(67) Those who take refuge in a church are to be protected.

We strictly ordain that no one shall take thence by force persons fleeing to a church whom the church is bound to

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<sup>1</sup> The Fourth Lateran, 51st canon.

protect; or shall blockade them round about the church, or withdraw victuals from them.<sup>1</sup>

(68) That churches are to be decently kept.

We ordain that no dances or low and indecent pastimes such as provoke to lasciviousness take place in churches or churchyards; and let no secular causes be conducted in them, particularly any in which a judgment of blood [*i.e.* life or limb] is involved. We ordain also that churchyards be decently enclosed round about, so that there be no access for unclean animals and brute beasts. Also let churches be kept undilapidated and neat, without sign of ruinousness.

(69) The undernoted are to be excommunicated four times a year.

Let sorcerers and notorious fire-raisers be excommunicated four times a year throughout the whole diocese; usurers; witches [male and female]; open reivers; those who raise malicious obstacles to wills lawfully made; persons deliberately perjuring themselves, so that by their means some one may lose his inheritance or his ecclesiastical benefice or right in land.

(70) Tithes are to be paid on all things that are renewed [or reproduced year by year].

Likewise let tithes be paid on all things that are produced anew from year to year, namely, on agriculture, trade, hay, flax, wool, and milk; and on the profits of mills, and on all other honest produce; according to the usages approved and obtaining hitherto.

(71) How many collects are to be said in masses.

With the approval of the holy synod, we have thought it desirable to ordain that throughout our diocese in the celebration of masses there should, besides those said in double feasts, be said five collects, one of the peace of the church, namely: 'We pray thee, Lord, to be pleased to accept the prayers of

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<sup>1</sup> Take away or prevent them from getting the victuals their friends brought them—so as to render the right of sanctuary nugatory beyond a day or so.



thy church, so that oppositions and all errors being made an end of, she may serve thee in untroubled liberty; through the Lord,' etc. Another for our lord the king, the queen, and their children, namely: 'O God, in whose hand are the hearts of kings; who art the comforter of the humble, and the strength of the faithful, and the protector of all who hope in thee; grant to our king and queen and their children, and to the Christian people, wisely to adorn the triumph of thy power;<sup>1</sup> that through thee they may be alway re-admitted to forgiveness; through the Lord,' etc.

(72) Of the visitation of the sick.

Likewise when it happens that a priest is called to a sick man, if haply after his confession is heard he desire to make his will, let him diligently advise and persuade him to remember, according to his means, the fabric of the cathedral<sup>2</sup> church, since from it the parochial churches receive the doctrines of salvation.<sup>3</sup> Let all things be done in the execution of this statute by his superior as he shall see to be most advantageous.

(73) Of giving admonition to lepers.

Likewise as to those who fall into the disease of leprosy, and by the general usage are separated from the society of men, we decree that when such persons transfer themselves to lonely places, they shall be effectually admonished by priests in their retreat to remember the parish<sup>4</sup> church according to the limits of their means. But if they cannot be persuaded to this, let no constraint be put upon them; for affliction should not be added to the afflicted, but rather pity should be shown to their miseries.

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<sup>1</sup> *Triumphum virtutis tue scienter excolere; ut per te semper reparentur ad veniam.* See note on page 45.

<sup>2</sup> The 70th of the Sarum constitutions enjoins priests to persuade sick people and those making their wills to remember *matricem suam ecclesiam Sarum*.

<sup>3</sup> *Documenta salutis.* *Documentum* corresponds to δίδασκα.

<sup>4</sup> Several Statutes of earlier date (e.g. one passed at the Third Lateran Council in 1179) sanction the erection of separate places of worship for lepers, provided the parish churches thereby suffer no loss. *Matrix ecclesia* is sometimes the cathedral church of the diocese, sometimes a church on which other churches depend, sometimes any baptismal or parish church.

- (74) That persons perjuring themselves in a matrimonial case are to be sent to the bishop.

Likewise by renewing the decree issued by our predecessor,<sup>1</sup> we straitly command that no parish priest shall admit to confession any one who in matrimonial or other causes deliberately perjures himself; but let all such be sent to our presence to receive penance from us.

- (75) Of funeral rites for the dead.

Likewise at the funerals and exequies of deceased lay persons, we forbid singing and dancing to take place; since it does not become us to laugh at the weeping of others, but in a case of the kind rather to grieve as they do.

- (76) That wrestlings and sports are not to take place in churches or churchyards.

To this prohibition we also think it well to add that at no festivals shall wrestlings and games be hereafter permitted to take place within churches or churchyards; and whoever, being thrice warned by the priest of the place, will not abstain from such doings, access to the church shall be denied to that person. Whoever after suspension shall not cease from his perversity shall incur sentence of excommunication.

- (77) That the sacrament of the eucharist is not to be refused to parishioners for their not having paid their tithes or offerings.

Further, we have been informed by certain persons that whereas on Easter Day the faithful of Christ ought to receive the sacrament of the eucharist, some priests—a thing we grieve to mention—shamelessly refuse to administer it unless they first produce their offerings at the altar; and on that very day make exactions of the lay members, holding the body of Christ in their hands, as if they were to say: ‘What will ye give me and I will deliver him to you?’<sup>2</sup> This we strictly forbid to be done hereafter, under the threat of God’s judgment [on it]: while we permit priests at a suitable time to compel

<sup>1</sup> It is not known to which of the Aberdeen bishops the several Statutes are to be referred.

<sup>2</sup> Quoting Judas’s bargain in Matt. xxvi. 15 (Vulgate).

their parishioners to make payment of tithes and other dues by ecclesiastical censure in the first instance.

(78) They are to be excommunicated who prevent their dependants from buying tithes.

Likewise by the report of certain persons we are informed that some lords of fiefs do not permit the men who live under their authority to buy tithes from the rectors of churches, although it behoves them [the rectors] to sell them or farm them out, and in remote country districts they [the tithes] cannot be collected by them [the rectors]. This we forbid to be done henceforth in any way, decreeing that all who may have done so, if on being admonished they desist not, shall be punished by their priests with sentence of excommunication.

(79) Of letting and renting.

Likewise we straitly command that henceforth churches shall not be bestowed on lease unless a contract be made with the assent of the bishop and archdeacon, of which several copies shall be taken, one of them to remain in their possession. Likewise the leaser of a church shall not convey it to another by way of farm, since any bargaining has the appearance of being carried on for the sake of worldly profit, and trading is wholly forbidden to clerics.

(80) That rectors must be ordained and serve churches.

Likewise we enact by an inviolable decree that the rectors of churches shall come up for ordination to the minor orders so that they may be ordained suitably [to the office they are to hold].<sup>1</sup> Let him that has a parish church hereafter serve it in his own person in that [holy] order which the cure of that particular church requires, unless he have already a vicar canonically instituted in the same. Let him that by dispensation holds several parish churches serve one of them, qualified and perpetual vicars being instituted in the others. And let him that will neither keep a vicar nor reside himself know that by authority of the Lateran Council he is deprived of that [cure, which is] to be freely conferred on another who shall be able and willing to fulfil the duties aforesaid.

<sup>1</sup> *Commode.* Compare Statutes 108, 134, 136, 137, 271.

(81) That laymen must not hold courts in a church.

Under pain of anathema, we straitly forbid laymen to hold their secular courts in churches or churchyards, and prohibit laymen from presuming to stand or sit amongst the clergy beside the altar while the sacred mysteries are being celebrated; our lord the king excepted, and the greater nobles of the kingdom, to whom in respect of their eminence we have resolved that deference should be shown in this regard.

(82) That the mistresses and concubines of priests or beneficed clergy shall not be admitted into the church.

Likewise we ordain, under threat of anathema, that the mistresses<sup>1</sup> and concubines of priests, either beneficed clergy or of clerks in holy orders, shall not be admitted in churches to the holy water or the kiss of peace, or to any share in the communion of the faithful. Nor let any fornicatresses be knowingly and deliberately received into their houses or lands by anybody.

(83) That marriages shall not be celebrated without banns.

Further, we forbid any one to contract marriage without triple proclamation of banns solemnly made in the parish where they live, if they reside in the same parish. If they live in different parishes, the proclamation must be made in both, and no espousals must be celebrated without trustworthy and lawful witnesses.

(84) [Of the caring for children of tender age.]

Further, we command that no mothers or nurses shall presume to lay infants of tender years beside them in beds, because of the frequency of the dangers therefrom arising.

(85) Of the giving of drugs to the sick.

Likewise we forbid any one unskilled in medicine to give to

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<sup>1</sup> *Focarie*; ostensibly housekeepers, actually mistresses or 'wenches.'

any sick person under pretext of medicine potions of deadly herbs, or to make or exercise any incantation.<sup>1</sup>

(86) Of the hiring of chaplains.

Also we ordain that no one be received as chaplain<sup>2</sup> to the cure of a parish who intends to make in it a stay of less than the space of a year; nor let him withdraw thence without reasonable cause laid before the archdeacon. And one who goes away without the certificate of the archdeacon, let no one dare to receive or maintain.

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<sup>1</sup> *Sortilegium* is properly 'sooth-saying,' which seems irrelevant here (unless in the sense of predicting when the sick person will recover) and means probably 'incantation,' as *sorcery* also came to mean more than divination. Magic and medicine were of old closely allied.

<sup>2</sup> The *capellanus* corresponded to the modern English curate.

#### NOTE ON THE COLLECTS IN STATUTES 71 AND 115.

The two collects quoted in Statute 71 above (p. 40) are from the Sarum Missal, and will be found side by side in columns 827\* and 828\* of Dickinson's edition of *Missale ad Usum Sarum* (Pitsligo Press, Burntisland, 1861-83). They occur in the second or later published division of the work, in the section of *Memoriae Communes*. The same collects are again referred to in Bishop Bernham's Constitutions (Statute 115 below), where only the first words are given. The collect *Deus qui caritatis dona*, named along with them there, is also from the Sarum Missal; see column 741\* in the same division of the edition named above. In Statute 115, where only initial fragments of the prayers are given, like *Deus venerunt*, it would obviously be impossible to translate without considerably expanding the quotations. The twice-quoted *Deus in cujus*, as has been pointed out to me by the learned author of *The Use of Sarum* (1898), is derived from collects in the ancient Gelasian Sacramentary (see *The Gelasian Sacramentary*, edited by H. A. Wilson, 1894, p. 276). The last clause might perhaps be translated 'that they may continually be renewed by thy pardon.' With *excolere* as 'adorn,' compare *doctrinam ornare* in Titus, ii. 10. The prayer *Ecclesiae tuae* will also be found in the *Gelasian Sacramentary*, p. 277.



[Ecclesiastical Statutes of the XIIIth Century.]<sup>1</sup>

## (87) [Of small tithes.]

Of calves that are born on the hills,<sup>2</sup> we ordain that every tenth one be paid, with the skin and offal. Also let the tenth calf be given, or the ninth or the eleventh; let the third [calf] be given in the option.<sup>3</sup> Likewise for every hen, two eggs. A tenth of the goslings of geese are paid. And so for a lamb a halfpenny; for a kid a farthing, or the third [kid] in the option. And for a pigling a halfpenny. And let all the mechanical crafts be tithed, upon oath, after outlays have been deducted.

## (88) [Of mortuaries.]

Furthermore, as to the mortuary from an intestate estate, that having been received which was already owing to the church, a third part of the third part is [still] due to the church. But from an estate disposed of by will, temporal

<sup>1</sup> On this series of Statutes see the note at page 50.

<sup>2</sup> *In montibus*.—I have translated the text as Dr. Robertson gives it. As it does not appear why calves 'born on the hills' should be specially legislated for, Bishop Dowden suggests that *in montibus* is an error for *in mortibus*. Dead-born calves are to be tithed, and the calf given to the church is to be given with its skin and entrails.

<sup>3</sup> The printed text runs simply: *Item detur decimus vitulus vel novus vel undecimus detur tertius in electione*. To Dr. Dowden also I am indebted for the key to this riddle in the Manx Statutes, passed at Synods of Sodor in 1229 and 1291, and printed by the Rev. W. P. Ward in *Records and Documents relating to the Isle of Mann and Diocese of Sodor and Mann* (1837). In a Statute of 1229, *De Electione et Collectione Agnorum Decimalium*, etc., it is provided that the farmer is to choose two and the proctors the third (*iconomus duos et procuratores tertium eligant*). And in a Statute of 1291, *De Decimis Primiciis et Oblationibus*, we read: *et ubi decem animalia decimanda sunt, habeat possessor optionem de duobus, ecclesia vero de reliquis; et ubi sunt nisi novem, detur nonum animal eodem modo sicut prius. Et si fuerint undecim detur nisi unum*, etc. Dr. Dowden accordingly interprets the Scottish Statute: 'If there were nine, ten, or eleven calves, one calf was to be given, but which? The farmer retained any two he liked, and the rector or his tithe-proctor chose any other (that is, a third).' So, further down, 'the farmer might pay a farthing for the tithe kid, or he might pick the two best kids out of ten, and then let the rector pick his tithe kid.'

debts being first proved and deducted, let the disposable property be divided in three parts; if the dead's part<sup>1</sup> exceeds [ . . . ? ], let a cow be given to the church of the parish. If it is said that the defunct has nothing, let it be believed on the oath of two neighbours, and let the biggest and best coverlet<sup>2</sup> be given up. Let the payment for the thirty masses [for the soul of the deceased] be divided between the parson and the chaplain, and so with the sum for the anniversary mass. And if any one dies without bequeathable property, let the heirs who have [such goods and gear] be compelled to pay the debt to the church on his behalf. And when infants die let their debts to the church be paid from any inheritance to which they would have been entitled. And for infants whose mothers die, let them pay to the church not less than the parents would do. And let not a deceased person be carried [for burial] from the place in which he dies save by the licence of his own priest; by whose arrangement<sup>3</sup> the funeral rites may be absolutely [reserved] for the church [of the parish]. If the defunct choose a special place of sepulture, let him in the first place be carried to the church of his parish, and, the dues being paid there, let him then be conveyed to the place he has chosen. Note that if a man live in two parishes and die in one of them, he will give to each church a corpse-present,<sup>4</sup> and the upper coverlet, unless he were a freeholder.

(89) [Of the Easter candle.]

And for the Easter candle, let a penny be paid by everybody who has a house of his own, or who lives in anybody else's house and has property of his own; let the Sunday penny with a candle and bread [be paid] by everybody

<sup>1</sup> The dead's part in Scots law is that part of a man's moveable property which he is entitled to dispose of by testament—the whole, if he leave neither wife nor children; a third if he leave both; and half if he leave widow or children, but not both. Here something must have fallen out of the text; the amount of a dead man's part was surely meant to be given in money Scots as in Statute 281 below.

<sup>2</sup> *Major pannus*. For the *umest claiith*, see below at Statute 281.

<sup>3</sup> Here again the text is imperfect or corrupt. Perhaps the meaning rather is, 'by whose arrangement a funeral shall absolutely be regulated as regards the church.'

<sup>4</sup> *Corporale exennium*.

who has a house of his own or the value of half a merk, or who lives in anybody else's house. With a child about to be baptized let a candle be brought and a clean white dress. For the purification three candles [are required].

(90) [Of the confession of women with child.]

Let every woman with child come to church at the beginning of the ninth month, and confess and receive the body of Christ. Otherwise the priest will not go to her [at her house].

(91) [Of the eucharist of the sick and their visitation.]

From the hour of vespers till next daylight, let not the eucharist be carried out of the church to any sick person without previous intimation,<sup>1</sup> save to one who falls ill suddenly.

(92) Of the rights of pasture pertaining to the priest.

Where there is no land set apart for the use of the church, let eight cows of the chaplain and his horse feed on the four-ways as a rule, so that the dues that are appointed in the matter of pasturage<sup>2</sup> may come to the church. Further, as to pasturage, let all the animals in the parish [other than the priest's], having been counted by the reckoning of the neighbours, be divided into nine parts, and then let animals making in number a tenth part be put on the pastures by the church.

(93) [As to not entering the choir and as to churchyards.]

We decern that laymen shall not enter the choir unless they are knights or barons or founders of churches. And specially women must not enter the choir in time of mass. And let not laymen enter at the times of our holding chapters unless they are summoned or invited. Nor let them hold their courts in churchyards.

(94) [Of sanctuaries.]

Likewise we decree that in every baptismal church and in every one where burials take place the churchyard should be

<sup>1</sup> *Antequam informetur*. A constitution of Archbishop Peckham (1279) directs that the people should be instructed (*informetur*) by their priest to adore the Viaticum when being carried by to the sick (Lyndwood, iii. 26).

<sup>2</sup> Substitute *ita quod ea quae in herbagio statuta sunt veniant ad ecclesiam*, or *ita quod in herbagio statutum est veniat*, for the impossible *ita quod in herbagio statutis veniant ad ecclesiam*; and for *compute*, read *computatis*.

a safe sanctuary for every one to whom the law allows it, to the extent of thirty paces round about.<sup>1</sup>

(95) [What perquisites are to be paid to rectors.]

Also we decree that the perquisite which is paid for [anything kept safe] by the rector's care, if it is put for safety in church or churchyard, shall be paid to the rectors of the churches.<sup>2</sup>

(96) [What fines are to be paid to ecclesiastical persons.]

Likewise we decree that if assault, effusion of blood, or theft take place in lands belonging to the church or to ecclesiastical persons, the money payment shall accrue to ecclesiastical persons.

(97) Of the tithes of cheeses.

We decree that tithes [be paid] in full during fourteen days, and that the whole produce of these [days] be reckoned as [the year's] tithe, butter being included with them. And we decree that the said tithings be made during the period when the produce of the cows is abundant.<sup>3</sup>

(98) [Of the tithes of tavern-keepers.]

Item we decree that by every several tavern-keeper one penny be paid to rector or vicar.

(99) [Of tithes of foals.]

Likewise we decree that foals be tithed according to what they can be sold for, or may be valued at.

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<sup>1</sup> The last clause apparently means, not the whole churchyard, but for a space round the church thirty paces in width.

<sup>2</sup> This statute was one of those Dr. Robertson notes as specially corrupt and obscure. Perhaps we may take it as a continuation of the subject of church sanctuary, and (as in the next statute) a provision against laymen usurping payments properly due to churchmen; interpreting the statute of things sent to the church to be kept from the risk of being plundered, especially in civil strife. This implies a relaxation of the 19th canon of the Fourth Lateran Council, which forbade the priest to put either his own or other people's worldly gear for safe keeping into the church.

<sup>3</sup> Compare Statute 107: tithes are not to be paid when the cows are not yielding milk at all, nor when the amount obtained is inconsiderable, but when it becomes *uberior*, 'abundant.' And all the cheeses made during fourteen days at this time were to be regarded as the tithe of the cheeses for the year.

(100) [Of mortuaries and the goods of a man dying intestate.]

Likewise we decree that the most valuable animal of the defunct be paid as mortuary to the church of the parish. And as to the goods of one dying intestate, let the prelate of the church [of his parish] dispose of them as in God's sight.<sup>1</sup>

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<sup>1</sup> Statutes 87 to 108 inclusive were entitled by Dr. Robertson simply *Statuta Ecclesiastica*, from the sentence prefixed to them in the Lambeth MS.—the only one in which they are found: *Incipiunt statuta ecclesiastica*. A more definite description was not attainable: there is no external evidence to show whether they were enacted by the provincial council for the whole ecclesiastical province of Scotland, or merely by some one of the diocesan synods. They fall distinctly enough into two groups—87-100 and 101-108; of which the former group, preceding this note, contains an unusually large proportion of statutes in which the Latin text is corrupt and obscure. With regard to the whole of the first group, as well as to 101 and 107 in that which follows, internal evidence affords no indication whether they are provincial or synodal; but Dr. Robertson (see note 1 on p. clxxxiv of his Preface) concluded that, if synodal, they pertained to St. Andrews. Statutes 102 and 103, mere transcripts from the *Decretum*, he held to be both provincial and synodal; 104, 105, and 106 provincial; and 108, a copy of the contents of Grosseteste's Constitutions, synodal merely.



(101) [An equal penance is imposed on him who is proved to have violated his spiritual daughter or his penitent.]

Those whom we admit to penance are as much our spiritual children as those to whom we act as god-parents, or who are regenerated by the water of baptism when at the word of the third immersion we baptize them. Silvester also has taught and warned every priest that there should be no occasion of fornication with his penitent: because it is written that all whom we admit to penance are as much our children as god-children in baptism. Wherefore if any one has committed a crime of this nature, let him not merely lose the honour of his office, but submit himself to penance even until the end of his life.<sup>1</sup>

(102) [Of the same.]

Now Pope Celestinus says on this: If any priest have committed fornication with his spiritual daughter, let him know that he has committed an aggravated kind of adultery. Therefore if the woman be a laic, let her give up all she has, and bestow her goods on the poor, and repairing to a convent, let her there serve God till her death. But let the priest who has given this evil example to men be deposed, and let him do penance in pilgrimage for fifteen years. And thereafter let him pass to a monastery and there serve God all the days of his life.<sup>1</sup>

(103) [Of the same.]

A bishop or presbyter must not have connection with women who have confessed to him their sins. But if perchance (which God forbid!) it has so happened, let him do penance as for his spiritual daughter; a bishop fifteen years, a priest or presbyter twelve years, and over and above let him be deposed if his offence come to the knowledge of the people.<sup>1</sup>

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<sup>1</sup> These three statutes, with their references to Popes Silvester and Celestinus, are taken from Gratian's *Decretum*, as noted by Dr. Robertson, vol. ii. p. 276.

(104) [That laymen must not take possession of the houses or goods of ecclesiastical persons.]

Since ecclesiastical possessions are to be converted to the use of the poor, let no powers over ecclesiastical persons or things be allowed to laymen, whose part is the duty of obeying, not the right of commanding; and since a sore and serious complaint is made as well by greater as by lesser ecclesiastical persons, that ecclesiastical possessions are plundered, monasteries as well in head as in members are ruined and ravaged, the houses of rectors, vicars, and ecclesiastical men and their goods wasted by the visitations of great personages and their followers and of other laics: in which connection discreetly and with a clear conscience it is not possible without peril of souls to disguise the fact or pass over it with conniving eyes, but rather a stop must be put to these mischiefs and oppressions and a wholesome remedy supplied; With the approbation of the sacred Council of the Scottish church, we decree and under pain of excommunication declare and insist that from this time forth no lay person of whatsoever pre-eminence, rank, or office, unless specially requested and invited—our lord the King and his children, patrons of churches in cases by law provided, and miserable persons to whom hospitality is to be afforded by way of charity being alone excepted—shall claim entertainment or house-room, or send or pass on his followers, horses, hawks, or dogs to be kept in monasteries or their granges, or the houses of rectors, vicars, or clerks or other ecclesiastical men, or occupy, take possession of, or despoil their goods by their own hands or those of other persons, or by means of any exaction or intrigue against ecclesiastical persons, or procure attempts to be made against the rights established by this statute. But if any layman, regardless of his salvation, shall turn out to have been an audacious transgressor of this statute in whole or in part, let him know that he has incurred the penalty of excommunication provided in the statute. And he that has suffered injury, let him on pain of suspension make complaint of the same within a month to the bishop of the place, the archdeacon, or their officials; and let these, the truth being ascertained, cause transgressors in this kind to be without loss of time publicly and solemnly

denounced as excommunicate persons in every several church in their dioceses on every Sunday and feast day, the bells being rung and candles lighted; and from this sentence let them not be absolved save by the Conservator of the Council, suitable satisfaction having first been made as well to the injured party as to the church. We also direct that this statute be published in all parish churches and knights' chapels four times a year when other sentences of excommunication by name are being published, that nobody may be able to excuse himself on the ground of ignorance; power being reserved to us of adding to, taking from, or modifying the said statute and of inflicting severe punishment, according as it shall seem to us more profitable for God and the church, for us and ours, and for the salvation of souls.

(105) [Of foreign clerics.]

Adding that all who are born furth of the realm of Scotland, whatever be their nation, and even if they bring with them letters of recommendation for service in parochial churches, shall in no case be admitted to serve [in such], nor even to serve in chapels that have not the cure of souls save as to Sunday celebration and masses for the dead, unless their conversation for a long period have been approved as honest by the diocesan or his archdeacon, or by [their having actually exercised] the cure of souls, and they have been presented to the diocesans and canonically admitted by their authority: all who are notoriously enemies being utterly and altogether excluded.

(106) [Of chaplains.]

Further, desiring to follow an ancient usage of the customs of our predecessors, we decree that no chaplain, whether hired for wages or having a parochial appointment, shall demand or receive for his services during a year a stipulated sum above a hundred shillings, although for some time past by reason of the exceptional dearness of provisions another usage has obtained. And let whoever contravenes this be *ipso facto* suspended from the celebration of divine rites, and be punished by making a payment at the discretion of his superior. Nevertheless, if any rector or vicar is disposed, not by stipulation but by way of exception, to make any gift of old clothes or

other things to his chaplain, we make no prohibition on this head. And if in some dioceses it has been the custom to pay a smaller sum by way of salary, then by the now prescribed usage or ordinance we by no means design to prejudice the said custom.

(107) [Of small tithes.]

Note that as well in tithes of foals, calves, and lambs as in tithes of wool and milk we ordain the rule hereafter to be followed—although by some corruption a contrary practice is hitherto being observed—namely, that in the tithing of wool [which] grows<sup>1</sup> throughout the whole year, all the months of the year are to be taken into account at the division. In the tithing of lambs, calves, and foals, we ordain that account be taken of the months from the time of their conception to the time of their weaning; and in the tithing of milk, let the months only be reckoned during which the cows and sheep are giving milk, but for the time they are dry let no account be taken.

(108) [Of the life and good repute of the clergy.<sup>2</sup>]

We also ordain that priests be forward to visit the sick; that the superaltars<sup>3</sup> be seemly; that the chrismal cloths be not turned to profane uses; that the words in divine service be

<sup>1</sup> To make the statute agree with fact, I venture to read *quod* for *non*, and so recognise that wool does grow all the year (though not equally); the Latin text as printed contradicts itself by saying it does not, and yet taxing for the whole time.

<sup>2</sup> As has been pointed out in the Introduction, this extraordinarily comprehensive statute—a small code in itself—is actually, with a few trifling alterations, the table of contents of the constitutions of Bishop Grosseteste, drawn up for his own diocese of Lincoln about 1238, as reprinted by Dr. Robertson (in a note to his Preface, at p. clxxxiv of vol. i.) from Dr. Luard's edition of the *Epistolae* of Grosseteste in the Rolls Series. Some of the slight variations are apparently errors of transcription. I have ventured to accommodate the Scottish statute to Grosseteste in the fifth clause as noted; and in the third clause from the end by adding 'of priests,' inasmuch as the constitution deals solely with priests' concubines, and we must interpret the table of contents by the contents themselves. The only important variation which seems intentional is that whereas Grosseteste forbade the clergy to study or teach secular law, the Scottish statute enjoins priests to study and teach ecclesiastical law.

<sup>3</sup> The *superaltare* was a small slab of consecrated stone laid upon or let into an altar not consecrated, or without a stone mensa. Grosseteste prescribes that it should be of suitable size, firmly fixed into the wood surrounding it (*i.e.* of the altar proper), and never be used for profane purposes—such, for example, as grinding paint on! The superaltar was sometimes detachable, and used as a portable altar.

enounced in full and with mental intention; that they give attention to the reading [of scripture] and to prayer;<sup>1</sup> that they teach their people the Lord's Prayer and the Creed; that they be continent; that they be not married; that they do not frequent the convents of nuns without reasonable cause; that they do not keep in their houses women about whom any suspicion may arise; that they be not drunkards or haunters of taverns; that they be not traffickers or usurers; that they let not churches on lease save in the cases permitted; that they be not sheriffs or justiciars; that there be no compact with priests about receiving the annuals<sup>2</sup> or tricennals [for masses for the dead]; that they have a reasonable sustenance; that the free lands of the church be not given to laymen on lease; that they do not erect buildings out of moneys belonging to the church, or store tithes on lay holdings; that revenues assigned to the maintenance of lights be not diverted to private uses; that on Easter day laymen should not both bring [their] offerings and communicate; that they [*i.e.* priests] do not look on at actors performing, or play at dice, large or small; that clerics bear not arms, but have the tonsure and a suitable garb; that none hold several cures save by dispensation; that sons give up their father's benefice to the nearest ministrant;<sup>3</sup> that

<sup>1</sup> Dr. Robertson's text has *quod intendant locutionem et orationem*, whereas Grosseteste's Constitution is summarised: *quod intendant lectioni et orationi*.

<sup>2</sup> The word *annual* is still used for masses said daily for a year after, or yearly on the anniversary of, a person's death, or the payment made for them; *tricennale* or *tricenarium* being an office of thirty masses for the dead said on as many days, or the dues paid for the same. It was also called *trigentliche officium* (see Statute 133), and in English the 'month's mind.' For the forbidden compacts (on the part of laymen), see Statute 116. For the other kind of *annuale*, see Statute 15.

<sup>3</sup> *Proximo administrantium*—apparently the cleric next in office over the usurper, of those really entitled (as he was not) to minister the sacraments; *qui altari ministrant* (Oxford Council, 1222). Grosseteste has *proximo ministrantium* in the Constitution which commands sons of priests to give up at once churches in which they have immediately succeeded their fathers, and patrons to present other suitable persons to the same. Grosseteste was dealing with a 'detestable' irregularity denounced more fully by the 17th canon of the London Council of 1237; from which it appears it was not uncommon for sons 'by a nefarious union' to succeed to their father's ecclesiastical benefices by mere heredity. Formal marriages of priests were as yet not quite unknown; and clandestine marriages, and still more irregular unions, seem also to have raised this problem. Compare Statute 263.



no priest impose a penance from the desire of making money; that deacons hear not confessions, nor administer the sacraments, which priests only are permitted to perform; that the sacraments be not sold; that beneficed clergy take the orders required by their cure; that they make residence; that the greater churches have deacons and sub-deacons; that there be no bargaining done in sacred places; that cemeteries be enclosed; that the Feast of Fools be utterly put an end to; that they do not celebrate with wine turned to vinegar; that they make study of and give instruction in the laws pertaining to the clergy; that the canon of the mass be accurate; that sports be prohibited in which there is a struggle to secure a prize;<sup>1</sup> that there be no games or secular courts in sacred places; that little children lie not beside their mothers; that clandestine marriages be prohibited; that none keep concubines [of priests] in his dwelling; that laymen be not in the chancel with the clergy; that the excommunications by the Council be published every year.

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<sup>1</sup> The clause about sports in which there is a contest to secure a prize primarily concerned what Grosseteste indicates as 'the raising of rams on poles and wheels' (*arietum supra ligna et rotas elevationes*), and by Du Cange, following Kennet's *Parochial Antiquities* (1695), was interpreted as a kind of quintain. But as Grosseteste's main objection (in his letter to his archdeacons) was that from this pastime arose 'wraths, hatreds, fisticuffs, and slaughters,' it seems rather to have been a struggle for the prize (as was not unusual in wrestling matches) of a ram, waged by main force between two persons, or companies of persons, who were apt seriously to lose their temper. Hence the Scottish statute would be limited to rough games producing these dangerous results.

[Constitutions of David, Bishop of St. Andrews,  
1242.<sup>1</sup>]

'To the OFFICE of pastor it pertains, as concerns the state of the churches entrusted to him and the instruction of those under his charge, to take vigilant care that when called to give an account of the flock committed to him he may be able to give the Lord interest on his talent. Therefore it is that of the rules that have been made by the ancient fathers we recall some to mind at present, adding others anew, lest (which God forbid!) we should appear to treat our office lightly.<sup>2</sup>

(109) [That churchyards be enclosed.<sup>3</sup>]

As to the state of churches, we decree that in the first place it be seen to that churchyards be suitably enclosed all the way round, so that no access be open to unclean and brutish beasts; for sacred places should be kept clean, and such as have been duly consecrated to God by bishops.

(110) [Of the enclosing of churchyards and the repairing and adorning of churches.]

We decree further that round about, as far as the chancels extend, churchyards be enclosed by the rectors, the remaining portion by the parishioners, unless the custom prevails that the whole of the churchyard be enclosed by the parishioners. Item that the churches be roofed, that the walls be unbroken

<sup>1</sup> David Bernham was Bishop of St. Andrews from 1239 to 1253. Some of his statutes (125, 130) seem to concern only one archdeaconry: one (139) Lothian only.

<sup>2</sup> With this prefatory paragraph compare the beginning of Grosseteste's letter to his archdeacons (Ep. xxii. in the Rolls Series Edition); and the *Additiones* to the Constitutions of Sodor and Man, added in 1350 (Ward's edition, p. 139) —in the latter case probably a quotation from Bernham.

<sup>3</sup> From a constitution by the Bishop of Worcester in 1240, it appears that these prescriptions were not levelled against careless cottagers, but were meant to prevent clergy from feeding their cattle in the churchyards. *Rectoribus ecclesiarum etiam et sacerdotibus inhibemus, ne ipsi in dictis ecclesiarum atriis animalia pascant vel intrare permittant.*

and not ruinous, the windows of glass and unbroken—those round the chancel to be kept in repair by the rector, but let those round the church be put in order by the parishioners. Item that the clergy be compelled thereto by the suspension of their stipend until the necessary repairs have been made; the laity, by suspension of their church privileges. We direct further that every church or chapel able to support a priest have its own priest, and have a silver chalice;<sup>1</sup> and to the purchase of the same, as well as of the other things necessary for the altar, whether in vestments or books or lights, let the rectors be compelled [each] by suspension of his benefice until out of their benefices the things lacking have been purchased; and, once acquired, they are to remain the property of the churches. The flagons or cruets for keeping the wine and the water for the eucharist of the Lord should be of silver or of pewter; the sacarium<sup>2</sup> neat and undilapidated; let the font also be not of wood but of stone and of becoming appearance, and let it not be put to other uses.

(111) [That chrism, eucharist, and fonts be secured with a lock.]

We decree also that in all churches the chrism, the eucharist, and the fonts be kept under safe keeping, locks and keys being provided, lest some overbold hand may reach forth to them to the commission of abominable and unspeakable acts.<sup>3</sup> But if he who has the charge of them have carelessly left them unguarded, let him be suspended from his office for three months; and if any sacrilege have thence arisen, let him underlie a more severe penalty.

(112) [Of the visitations of archdeacons.]

Further, we will that every church in our diocese be visited

<sup>1</sup> A council at Westminster, in 1175, following one at Rheims, expressly forbade consecration of the Eucharist in other than gold and silver vessels, and decreed that no bishop should consecrate pewter vessels. The Council of York in 1195, however, recommends a silver vessel only *ubi facultas suppetit*, where the church can afford it. *Stanneum* is used of pewter as well as of tin vessels.

<sup>2</sup> *Sacrarium* in the same sense as at p. 35.

<sup>3</sup> The abominations referred to are probably those set forth in the constitutions of the diocese of Paris about 1196, which add to the prescription of locking the font 'for fear of divination (*propter sortilegia*) by means of them.'

by our archdeacons or their deans every year, and all deficiencies in churches and churchyards, books and ornaments, be brought under our notice in writing; that whatever is to be put right may be put right in accordance with our instructions.

(113) [Of the life and good repute of the clergy.]

We decree furthermore that all the clergy, in whatever rank they be, and particularly those in holy orders who have the cure of souls, have their hair clipped all round, so that their ears be uncovered, and have large and seemly crowns [of hair]. That priests do not have capes with sleeves, or plaited capes, but round ones without sleeves; nor shoes nor sleeves decorated with laced-work. To this we add that all clerics, and particularly priests, unless when on a journey or under pressure of necessity, must not eat or drink in taverns or mix with open tipplers. Let them not play at dice or other games. And if on transgressors of this statute injury of the nature of the violent laying on of hands be in any way inflicted by laymen, let no hearing be given by the ordinary [to a complaint about it]; but let the priests be suspended for three months. And especially we will and ordain that priests, who daily handle the flesh and blood of Jesus Christ, and where they are by their duty bound to administer whenever the occasion calls, shall not have wenches [*i.e.* mistresses] in their own or other people's houses; but let their dwellings be cleanly and respectable. Nor let them even have kinswomen in their houses, unless they be such as no suspicion can arise about; but if they be disposed to make provision for such, let them do so in places far removed from themselves and beyond suspicion. Let no one, moreover, receive in his house, entertain, or keep a priest's wench or concubine. But if any one transgress this statute, let him be held bound by the church to give condign satisfaction, and be otherwise punished at the discretion of the judge, so that temporal punishment may at least deter from sin those whom the fear of God does not restrain from evil.

(114) [Of the wenches or concubines of clergymen.]

We decree that after this whatever priest be found to keep a wench or a common prostitute, and, after having been once fined in proportion to his means, be convicted of returning to

her or to another such-like woman, or be unable to clear himself when common report charges him therewith, we will that such one be thenceforth suspended by our authority without hope of pardon. Let priests beware of having carnal knowledge of their women-penitents, an offence for which the canon inflicts a penance of fifteen years, and thereafter [seclusion] in a monastery; for they sin no less heinously than if they were carnally to know those to whom they acted as god-fathers. And because it behoves us sometimes to devise new remedies, we enjoin further that priests' concubines be not admitted by any church to the kiss of peace or the holy water. And if they remain in the priests' houses till their death, let them be refused Christian burial; and if the priests die first, let their concubines receive nothing from their wills. Further, let a priest's concubine obtain nothing in consequence of his promise made to her for the dishonour done to her body. Item let no priest admit a priest's concubine to penance unless she resolve to forsake her sin—for sin should never be forgiven unless it is first forsaken; and this rule is to hold good in the case of any one openly living in a state of mortal sin.

(115) [Of the celebration of masses.]

Item the utmost care must be taken that in the consecration of the body and the blood of our Lord water be added in so moderate a quantity that the wine be not absorbed by the water, but the water by the wine. But let the wine used be red rather than white; in white wine, however, there is valid consecration. Let priests beware that the wine be not turned to vinegar or mouldy; and be particularly careful not to celebrate with vinegar, since vinegar has lost all the substantial properties [of the wine]. Let the host be made of pure wheat, round and entire and spotless, because the Lamb of God is without spot and not a bone of him was broken. Once a day in every church before the *Pax Domini* is said in any mass, whether it is for the dead or any other mass, let there be said, with prostration and the ringing of the bell, the prayers for remission of sins: *Paternoster*, *Deus venerunt*, *Levavi*, and the collects for the king and the bishop, and for the troubles and perils of the church; and when these have been finished let there be said *Kirieleyson*



thrice, *Paternoster . . . et ne nos*; afterwards these prayers, *Exurgat Deus, Domine saluum me fac, Fiat pax*; the collect *Deus in cuius*, and in that collect let there be added 'for our king and the queen and their children'; the collect *Deus qui caritatis dona*; the collect *Ecclesie tue quesumus Domine preces*, etc.<sup>1</sup> Now when the celebrant has come to the participation of the body and the blood of our Lord, if he must celebrate a second time on the same day—which it is not lawful for any priest to do unless there is an urgent necessity—let him not take the wine, or the water which after the consecration<sup>2</sup> is poured out to rinse the chalice; for by every kind of meat or drink is his fast broken, so that on that account he could not celebrate. Let him pour that rinsing of the chalice into some clean and seemingly vessel set apart expressly for this use and no other, and let him take it after his second celebration. But if some boy or other server be present of whose piety the celebrant has no doubt, he may safely give the aforesaid ablutions to him.

(116) [Of the same.]

Item let no celebrant elevate the host, but let him keep it in front of his breast, until those words are finished: 'This is my body.' Item we forbid any priest to serve two churches. Item let the parish priest not celebrate masses for the dead on receipt of or in hope of payment. Item if it has been entrusted to any one, as executor, to have masses said for the living or for the dead in any particular manner, or to select one [priest] rather than another for celebrating in the said masses, let him [not?]<sup>3</sup> receive any kind of remuneration.

(117) [Of the reservation of the eucharist and the visitation of the sick.]

We further decree that when in cities, burghs, and castles the eucharist is brought to the sick it be placed in a

<sup>1</sup> See Statute 71 (p. 40), and the note on these prayers at p. 45.

<sup>2</sup> One would expect here rather 'after his communion.'

<sup>3</sup> Unless this statute is to contradict all the others forbidding simoniacal compacts, we must assume that a *ne* has been dropped out of the last clause. With *quocunque* I understand *modo*; and *in eisdem missis celebrando* must be corrected in accordance with grammatical rule as a transcriber's slip.

clean and befitting pyx, and that the pyx itself be placed in a chalice of pewter if such is possessed, and that it be wrapped in a clean linen cloth: and, preceded by lantern, cross, and holy water, let the priest, clad in surplice, if the weather permit,<sup>1</sup> holding the pyx aloft in a solemn and reverent manner, go in procession to the sick person, unless he is at a great distance: [but otherwise] let the eucharist be carried in a clean and seemly pyx enclosed in a box which may serve to protect the pyx from the inclemency of the weather. Let the host which is to be given to the sick be renewed every Lord's day and put in a seemly and secure place. On other days, however, it may be renewed at need.

(118) [Of baptism and the form of baptizing.]

Deacons cannot baptize and administer [the sacrament of] penance, and let them not presume to minister the eucharist. In peril of death a deacon and even a layman will have power to baptize. Parishioners should be taught these things in church, and how baptism is to be administered under these words: I BAPTIZE THEE IN THE NAME OF THE FATHER AND OF THE SON AND OF THE HOLY GHOST. AMEN. For which reason the child who has in accordance with this canon been baptized in a critical emergency should, if he recover, be brought to the church, but should not be exorcised. By no means let the priest supplement the last rites which in baptism precede the immersion, but only those which follow. And we further enjoin that if there is doubt of any one's baptism, he should by all means be baptized (for it cannot be said that the sacrament has been conferred twice which so far as is known has not been conferred once) with these words: 'If thou hast been baptized I do not baptize thee, but if thou hast not been baptized I baptize thee in the name of the Father and of the Son and of the Holy Ghost. Amen.'

<sup>1</sup> This condition is not referred to in the English statutes cited by Dr. Robertson, but when he says, in his note on Statute 61, that it is peculiar to the Scottish legislation, he has overlooked the first prescription of a council at York in 1195, where not merely the inclemency of the weather but the bad roads are taken into consideration: *nisi aeris intemperies, vel viarum difficultas, vel alia ratio praepediat*. So also a Worcester constitution of 1240. Doubtless the York statute was before the eyes of the Scottish fathers: possibly some of those who framed it had a share in drawing up No. 117.

## (119) [Of penance.]

To eradicate simoniacal corruption from the priesthood we further enact that on no layman in sickness or in health shall they enjoin masses for a penance. We order also that no priest receive another's parishioner to penance unless by permission of his own priest. But if that parishioner ask to go to a more discreet priest, then let his own priest in kindness grant him permission. The parishioner must however in that case be careful not to divide his confession; but without his [own priest's] permission let him go to no other. Moreover, let the priest explain that extreme unction makes nothing unlawful to the sick man after he recovers which had been lawful to him before he took ill. He should also explain that the said extreme unction can be repeated as often as may be required.

## (120) [Of burial.]

Moreover, we will that if any one have been overtaken by sudden death he shall not lack Christian burial, unless he have died an excommunicated person or been killed in some deed in which he commits mortal sin. For with whom in life we are in communion, with him also in death ought we to be in communion.

## (121) [Of matrimony.]

Marriage must absolutely not be contracted between persons who are unknown nor even between persons who are known, unless it have been preceded by a threefold solemn proclamation, as well of the man as of the woman, publicly made in the church on three Sundays.

## (122) [Proclamation of excommunication to be made in churches four times in the year.]

Item we decree that solemn sentence of excommunication be pronounced in all churches on Sunday four times every year. Let a general excommunication be pronounced against all soothsayers, fire-raisers, forgers, professional usurers, robbers on the king's highway; all who wittingly obstruct wills lawfully made; all laymen who withhold or seize, diminish or carry off unjustly teinds or lands or other privileges or possessions of

the church ; all witnesses who deliberately forswear themselves, so that through them some person loses any inheritance or ecclesiastical or secular benefice. Item that no priest without the advice of his bishop absolve such perjurers unless in peril of death. Item that the priest publicly warn his parishioners that no one, under colour of a reprehensible custom which has long been prevalent, swear in concert with his neighbours against his conscience either through affection for another or at another's bidding. Item that perjurers of this sort be not absolved without the advice of the bishop unless in imminent peril of death. Item that priests first and foremost admonish such of their parishioners as are open fornicators, and persuade them to put away their strumpets. And if afterwards they return to them, that in the presence of at least three trustworthy witnesses summoned for the express purpose, an oath be exacted from the fornicators that if they thereafter have knowledge of their strumpets, they shall thenceforward treat them as their wives.

(123) [Of residence.]

Item that a parson or vicar do not leave his own parish and take up his residence in burgh or town save on urgent occasion, or when a dispensation has been granted to him. That he who has been once admonished and does not return, be deprived of the revenues of his church for the space of four years.

(124) [That marriages or betrothals be not contracted without witnesses.]

Item that no one contract marriage or betrothal unless in the presence of lawful witnesses, by whom the marriage can be proved should any doubt arise about it.

(125) [Of monks and canons-regular who are fugitives.]

Furthermore, forasmuch as we know of a certainty that many warnings have before gone forth from our predecessors and from ourselves to the effect that if there are any monks or canons-regular who are fugitives in this archdeaconry, they return to the observance of their rules to which they are bound by their profession or in any other way: All these, therefore, we admonish anew that they abandon their apostasy and return to their monasteries, or at least seek from us warrants

which will issue up till three months from the day of the promulgation of this statute in this archdeaconry: otherwise, let them know that they are thenceforth by our authority excommunicated. And that none may plead ignorance, let this statute be published in every parish church on the next following Sundays.

(126) [That religious be not admitted for a stipulated sum.]

Item we decree that no monk or nun or other religious person be received [into religion] for a stipulated sum.

(127) [That clerics do not hold secular offices or carry on trades.]

Item we decree that clerics must not hold secular offices or engage in trade.

(128) [That churchmen do not write or dictate sentences involving bloodshed.]

Item we decree that no churchman dictate or write a sentence involving the shedding of blood.

(129) [That rectors be resident or appoint vicars.]

Item we decree that all rectors either reside in their parishes or present vicars to a decent maintenance therein.

(130) [Of chaplains and deacons ordained in another diocese.]

Item we decree that no rector of a church in this archdeaconry keep any chaplain or deacon in the service of his church, even although he himself is sure about him, unless there be lawful evidence of his ordination and good behaviour, and even in that case let him present him to the lord bishop or to his officials; but if a chaplain or deacon be unknown, he shall in nowise be admitted to the exercise of his office in this diocese unless he have letters patent of recommendation from his bishop or his archdeacon, by means of which legitimate assurance may be had as to his ordination and good behaviour.

(131) [Of the changing of priests.]

Furthermore, whereas from the frequent changing of priests much expense and many disadvantages are occasioned to churches, we decree that when any one proceeds to arrange about a priest for his church he should procure for himself one whom he may be able to retain for a year at least; since if he must for any reason be removed at the end of the year or



before that, he is to be dismissed and another put in his place [only] by the advice of our archdeacon or dean or officials; and this we design to be applicable to parish priests.

(132) [That churches or benefices be not let on lease.]

We further also enact that no one receive on lease any church or living without our own or our officials' assent; and particularly that no one have two churches on lease without our authority or permission; and in especial that no layman receive a church on lease. Let a contract to this effect entered into between parties contrary to the tenor of this statute be held as of no effect: and let no hearing be given to those who make complaint of the non-observance of contracts of the kind.

(133) [That chaplains do not celebrate until they make their canonical obedience.]

Also we forbid, on pain of anathema, any chaplain of a parish church who says mass for the dead, or resides with knights or any others, to celebrate in our diocese, until he makes his canonical obedience; and particularly let not those whose duty it is to say mass for the dead every day in the year bind themselves to perform a trental [of masses]<sup>1</sup> instead of another.

(134) [Of residence and the ordination of vicars.]

Moreover, we reiterate what our venerable father Otho,<sup>2</sup> by the grace of God legate of Scotland, lately decreed as to the residence and ordination of vicars, and decree that all vicars shall without excuse or exception reside in their parishes and receive holy orders in due succession, under the penalty inflicted in the same statute, which must be observed in both of its articles.

(135) [Of rectors.]

Wishing in our pastoral solicitude to provide for the visitation of churches, we ordain by statute that all rectors of churches shall within five years [after]<sup>3</sup> they have been

<sup>1</sup> See note 2 on Statute 108. The *capellanus* corresponds to the modern curate, who is engaged to perform or assist in performing the incumbent's duties in a parish.

<sup>2</sup> In the 10th canon of the Legatine Council under Otho in London in 1237.

<sup>3</sup> A *postquam* must be supplied in the first part of the statute: the text of the latter part is obviously corrupt, and the translation conjectural.

appointed to churches take up residence in their cures as is the duty of pastors; public intimation being given in any parish in which they do not reside that their place of abode is in such and such a parish.

(136) [That rectors either have suitable priests in their parishes or be themselves ordained as such.]

Let the rector of every parish see to it that he has in his parish a priest who is capable, efficient, and well-educated, or else declare that he is himself being ordained priest to minister in the same order in the parish.

(137) [That rectors be ordained.]

We decree that all rectors of parishes be at least in minor orders, the next in rank to holy orders, without waiting for another admonition after the present one; [as to those who do] otherwise, let all to whose knowledge this statute shall come know that they are suspended from the revenue of their church, and are over and above liable to be deprived of their benefice.

(138) [Where confessions ought to be heard.]

Furthermore, we forbid confessions of women to be heard between the veil<sup>1</sup> and the altar: they should be heard in another part of the church beyond earshot, but not out of sight of men.

(139) [Of the promulgation and observance of the foregoing statutes.]

We also enact in virtue of holy obedience that the foregoing statutes be published in every parish church without exception, and be carried out in their entirety by all. But let transgressors of these laws know that they will be compelled by ecclesiastical censure to render condign satisfaction: and if these foresaid statutes be not found in any parish of the arch-deaconry within eight months from the day of the holding of this synod at Musselburgh, the Monday following the feast of the Invention of the Holy Cross in the year of grace 1242; we have decreed that the rectors of the same parishes, if present, or, if absent, their procurators, are thenceforward by our authority suspended from the revenue of their church.

<sup>1</sup> A veil or curtain in front of the sanctuary or chancel. Compare the 17th Constitution of St. Edmund of Canterbury (1236).

## [Synodal Statutes of St. Andrews, XIVth Century.]

We enact the synodal decrees which are hereinafter written:—

(140) [That rectors possess the synodal decrees.]

We enact that there be no rector or vicar who does not possess all the synodal decrees, and cannot read and understand them (since a consequence is that through their ignorance of them our officials and archdeacons are often put to trouble); and that they be brought every year to the synod, and this we decree under a penalty of forty shillings.

(141) [That rectors and vicars be resident in their parishes.]

Item we have statute that every rector or vicar or other holder of a benefice make personal and continuous residence in the place of his benefice, as the terms on which he holds it require: a rector to be fined in a sum of ten merks, a vicar and other beneficed persons in a sum of one hundred shillings.

(142) [Of the manses of the beneficed clergy.]

Item whereas by reason of the meanness of the houses we cannot be entertained in the benefices within our diocese, and in consequence cannot in our own person perform our official visitation or discharge the duties incumbent on us in virtue of that office: we have decreed that every holder of a benefice shall against the next visitation make arrangements for building [a manse] according to the revenue of his benefice, so that we may, if need be, be accommodated therein: and this under a fine of a hundred shillings on every [defaulter].

(143) [That churchmen put away their wenches or concubines.]

Item we will and ordain by statute that all and sundry rectors, vicars, and other beneficed persons lead a chaste life and put utterly away from them their wenches or concubines within three months from this date, and that so entirely that no sinister suspicion of incontinence may be cherished

against them : under the pain of deprivation on offenders who have been thrice admonished ; on those twice admonished, of ten merks ; on those once admonished, of forty shillings and suspension from celebrating divine services.

(144) [That churchmen ordained outwith the diocese be not admitted without dimissory letters.]

We enact that no one from another diocese, especially a foreigner, be allowed to celebrate divine service unless he have letters giving sufficient proof as well of his orders as of his permission to leave the diocese, which shall have been approved by us or our official in synod or consistory. But any contravener we order to be fined in the sum of five merks, to be uplifted by our official and our deans and collectors of escheats.

(145) [That no religious be engaged for a fee to celebrate without special licence.]

We also decree that no religious be engaged for a fee to serve a cure or minister the sacraments of the church within our own diocese unless he has our special licence, which ought to remain in writing in the possession of the said religious.

(146) [That no priest celebrate several masses a day.]

Also inasmuch as certain priests looking more to gain than to piety, appropriate to themselves the salaries of many—though they can scarcely discharge the sacred obligations of one priest—by celebrating several masses a day ; this we forbid to be done when there is no necessity for it. We have ordained that whoso transgresses be punished with a fine of one hundred shillings, to be applied to pious uses.

(147) [Item of the same.]

Item a like penalty must be inflicted on those who have persuaded their temporal lords, whether one or more, male or female, to sue for a [permission to the] contrary.

(148) [Of the hearing of the confessions of clerics.]

Item because by usage conform to the decisions of canon law no one can be judge [in his own cause] so far as to be allowed to choose a confessor without the permission of his superior ; lest by reason of our neglect those under our

authority should incur danger to their souls, we appoint the following, whose names are written below, to hear the confessions of clerics and to enjoin penances to the end of the year, for each of the deaneries, a, b, c, d, e, f, g.<sup>1</sup>

(149) [That churches should have their full complement of clergy.]

We decree also that every church, oratory, or chapel in our see have its full complement of priests and clerics, so that divine worship may not be stinted in our times. Let him, moreover, who is negligent in the matter of this statute be canonically punished.

(150) [That priests must not celebrate in short tunics.]

We have furthermore decreed that no priest celebrate in a tunic so short that it does not reach beyond the knee, under a fine of ten merks, one half of which shall be given to the informer, and the other half applied to pious uses.

(151) [That rectors and vicars and parish-priests shall have seals.]

We furthermore enact that every rector or vicar and parish-priest have a seal with his name inscribed on its circumference, so that the bishop and the archdeacons and their officers may be informed and certified as to citations and the execution of their other mandates; and this under a fine of half a merk on every defaulter.

(152) [That priests do not wear the long knives<sup>2</sup> which are called *hangaris*.]

Item we enact that no priest shall wear the long knife which is

<sup>1</sup> The diocese of St. Andrews fell into two archdeaconries and eight rural deaneries: the archdeaconry of St. Andrews with the deaneries of Fothrif, Fothreve, or Fothri (the western division of Fife, with Kinross and Clackmannan), Fife (Fife proper, the eastern half), Gowrie, Angus, and Mearns; and the archdeaconry of Lothian, with the deaneries of Linlithgow, Lothian or Haddington, and the Merse.

<sup>2</sup> 'Long knives' sounds somehow more bloodthirsty than the words daggers or swords; but it is *longi cultelli* that were prohibited to priests at Rouen also in 1231 and elsewhere. That our statute was taken direct from an English source appears from the form *hangar* or *hanger*, which is southern, *hynger*, *hingar*, or *whinger* being northern. That the custom of wearing such weapons (even 'in the choir, hidden under the toga or habit,' as at York) was not unusual for priests is shown by the constant repetition of the prohibition (as at London



called a *hangar*, save when he is equipped for a journey, under the fine of half a merk.

(153) [That church-livings be not directly or indirectly leased to laymen.]<sup>i</sup>

We enact that no rector or vicar or other cleric whatsoever, regular or secular, the possessor of a church-living, shall presume to set or let his living on lease to laymen directly, or indirectly with the help of a clerical person interposed so as to lend colourable and fraudulent appearance to the transaction. But if any one without our licence first sought and obtained shall contravene such rule, let him be held liable to be deprived and [actually] be deprived of the fruits of his benefice for a whole year, and they shall be applied to building the fabric of the church of St. Andrews.

(154) [That beneficed churchmen do not undertake the management of secular affairs.]

Item whereas some beneficed churchmen in our diocese, enslaved by the vice of avarice, address themselves to the employments of laymen, in consequence of which clerical credit is often injured; by statute we insist that no rector or vicar or any other churchman whatsoever who holds a benefice shall in any way be understood to manage any layman's affairs, or shall hereafter presume to make intrusions as to which he will be held bound to render account; seeing that such administrations are utterly prohibited by the sacred canons. But let him who presumes to attempt the contrary underlie the penalty of deprivation, unless perchance the said business has been undertaken in virtue of our special licence; the affairs of our lord the King, the Queen, and their children alone being excepted.

(155) [Nuptials shall not be blessed unless preceded by banns.]

Still further, whereas the nuptials of some persons marrying contrary to the statutes of the canons have in times past

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in 1268). The danger of it is illustrated in the Ripon *Chapter Acts* (Surtees Society), which, under the year 1503, record a fight between two chaplains *cum gladiis vocatis hyngers*; and by a story in Fordun's *Scotichronicon*, lib. vi. cap. 54 (Goodall's edition, vol. i. pp. 371, 372).

been blessed by priests ignorant of the law, from whose action it is known that great scandal has arisen in the church of God; wherefore we statute and ordain that no priest shall dare to bless or take part in blessing within our diocese the nuptials of any persons of whatsoever rank or dignity they be, unless the banns have been first published and proclaimed according to the custom of the church; notwithstanding any assertion made by the parties in person or by proxy that they are ready to find a canonical pledge for indemnity, which canonical pledge we by the present statute repudiate and decree that it be in nowise accepted. But if any priest, unmindful of his own honour, shall dare to transgress this statute, not only shall he be *ipso facto* suspended from office without hope of favour, but he shall also lose all hope of preferment unless of our charity a dispensation be granted to him by us. And parties marrying contrary to this our statute shall underlie canonical punishment.

(156) [That espousals be not contracted without the presence of priest and witnesses.]

Furthermore, we decree that parties wishing to contract espousals, whether according to the formula for a union 'at present' or 'in the future,'<sup>1</sup> contract the said espousals in the

<sup>1</sup> Espousals, a formal contract preceding the marriage celebration, might be entered into by the parties themselves, or their parents and guardians for them, and was regarded as irregular unless performed in the presence of a priest and before witnesses. A normal espousal was *per verba de futuro*, a promise of each to each to proceed to marriage *in facie ecclesiae* on some subsequent date. A breach of this promise incurred Church censure, as well as the legal penalty of breach of contract. There were also *sponsalia per verba de presenti*, a declaration that they now consent to marry; which did not supersede the actual solemnisation of marriage. A contract of future espousals, however regular, did not amount to marriage; a contract of present espousals, where the man said, 'I take thee for my wife,' and the wife said, 'I take thee for my husband,' or words to that effect, with the gift of a ring, was a legal marriage; although *copula carnalis subsequens* in either case made a valid (though irregular) marriage and voided any future marriage of either party in the lifetime of the other. In Scotland, where 'handfasting' and ante-nuptial irregularities seem to have been rampant from a very early date, clandestine and other unions provided much work for the ecclesiastical courts. The *sponsalia per verba de futuro* and *de presenti* and their relation to the nuptial rite continued after the Reformation to raise problems for kirk sessions. See the preface to the *Liber Officialis* of St. Andrews, and Dr. Hay Fleming's introduction to the *Register of the Kirk Session of St. Andrews*.

presence of a priest and of trustworthy witnesses: and we further enjoin that on the next following Sundays and festivals they publish the banns according to the custom of the church, and that thereafter there follow, as quickly as is conveniently possible, the nuptial blessing, given not in private chapels and at night, but solemnly and publicly in their own parish churches; that those, moreover, who contract these espousals have meanwhile no carnal intercourse; but that, if any do so, they underlie canonical punishment as if they were fornicators.

(157) [That churchmen under accusation do not resort to laymen for succour.]

Item whereas some beneficed churchmen in our diocese, as we have learned by experience, careless of their own good name and enemies of their own good character; when about to be, by us and our officials, put under correction for their offences following the example of Judas, the despairing traitor, who, after he betrayed our Lord, turned not to the Apostles but to the Jews for counsel; resort to laymen and chiefly to those who are powerful, and return from them, as we have good reason to suspect, not without [bestowing] gifts to induce them to present supplications, on behalf of themselves and their possessions, to us and our officials, so that they may escape the punishment of their misdemeanours—yet surely not without disgrace to themselves; wherefore we prohibit this to be done in the future, and enact that if any one be found culpable on this head, he not only lose the benefit of such petitions as may have been made on his behalf, but also be held convicted of the offence with which he was charged, even although it has not been otherwise proven.

(158) [That excommunicates be not admitted to burial in a churchyard.]

Item we decree and by statute we forbid any one holding a cure in our diocese, by whatever title he may be rated, who has charge of Christian burial conducted by himself or another, to admit within his churchyard any one who may have elected to be buried there whom he knows to have in life been excommunicated by canon law or specifically, in general or in particular; unless he shall have sufficient evidence of his having

been absolved by him who has power to absolve. But let the contravener know that he will be *ipso facto* suspended from priestly functions for a year.

(159) [Of holding a consistory once a year.]

We have also decreed, and in virtue of our episcopal authority ordained by statute, that all rectors, vicars, parish priests and other chaplains of churches officiating for the dead as well as in place of chaplains assemble once in the year, and in this case at our next consistory to be holden after Easter: to wit; those in the archdeaconry of St. Andrews in the parish church of the same city, and those in the archdeaconry of Lothian in the church of St. Giles in Edinburgh: to hear and receive from us or our official, or other person whom we have judged specially fit to represent us in this matter, our instructions how they should acquit themselves in the celebration of mass and the ministration of the sacraments of the church according to the statutes of the canons, and how they should likewise instruct their parishioners in those matters which concern the salvation of their souls.

(160) [Names of persons in every parish who stand in need of discipline are to be reported every year to the bishop in consistory.]

We statute and ordain that at the above-named days and places they<sup>1</sup> bring in writing with them every year the names of all persons in their parishes who need discipline, who are notorious, or about whom there is any public scandal; so that at our next visitation we may suitably reward them as good stewards for their faithful service, in faithfully reporting to us and vigilantly watching over the flock committed to them under us, or contrariwise if they have been negligent.

(161) [The names of all who die in every parish should every year be reported to the bishop at his consistory.]

Furthermore, also, we will and ordain that they<sup>1</sup> bring with them in writing every year, as above, the number and names of all who die in their parishes,<sup>2</sup> of whatever condition, or rank,

<sup>1</sup> The clergy named in Statute 159.

<sup>2</sup> On this first establishment of parish registers of deaths, see Dr. Robertson's note on this Statute (vol. ii. p. 280), and the Preface (vol. i. pp. clii, clxxxvi).

or age they be, and who have died testate or intestate, that thereby we may learn how the last wills of deceased persons, and especially in respect of their bequests to religious purposes, are having due effect given to them by the executors of the said deceased persons, or perchance by our officials as executors, if in any respect they have fallen short of their duty. Moreover, let whosoever has been a transgressor of this our statute in whole or in part, be fined, if a rector, forty shillings; if a vicar, twenty shillings; if a parish priest, ten shillings; if merely a chaplain, six shillings and eight pence; unless there is legal proof of his labouring under a canonical impediment. Now this our statute [comes into force] on the feast of our Lord's Resurrection in the year of our Lord one thousand three hundred. . . .

(162) [Of the obedience of clergymen.]

Item whereas obedience is better than sacrifice, and contumacy and disobedience are compared to the sins of witchcraft and idolatry,<sup>1</sup> we enact that all clergymen who are contumacious to their bishops in their lawful and canonical commands, and who, having no clear and reasonable cause, refuse to obey, be suspended from office, and if their contumacy become aggravated, be punished with a severer penalty.

(163) [A general excommunication.]

We excommunicate all those who dare maliciously to despoil churches of their rights or through ill-will strive to violate their immunities: also all ill-disposed invaders of church property: Item all who burn churches or houses in time of peace: Item all who deliberately withhold teinds: Item all who obstruct testament or matrimony lawfully made: Item all who counterfeit our lord the Pope's briefs or our lord the King's seal: Item all false coiners and clippers of money; Item all who give or procure poison to be given to any one: Item all who wittingly bear false witness or procure it to be borne: Item all who substitute false heirs: Item all who put scandal maliciously on any man when he has not been chargeable: Item all common usurers: Item all sorcerers and all confidently believing in them: Item all who cast down their

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<sup>1</sup> 1 Sam. xv. 22, 23.



offspring at church doors or in other places: Item all who put hand on father or mother with evil intent: Item all who put violent hands on priest, deacon, or clerk in holy orders: Item all who take thieves from church or church-sanctuary deliberately: Item all guilty of infanticide: Item all who falsely impute a child [to another]: Item all who hold intercourse with an excommunicated person or wittingly help him: All who knowing they are suspended celebrate mass: All guilty of simony as principals or as proxies: All who desecrate church or cemetery in consequence of which it requires to be reconciled: All who succour the Saracens in arms or otherwise against Christians: All who favour heretics and who receive schismatics wittingly: All who go about at night for the purpose of stealing: Item all who trouble the peace of the king and most of all the peace of the church with evil intent: Item all who fix false boundaries<sup>1</sup> wittingly: Item, all who withdraw from the unity of holy mother church.

(164) Of the reconciliation<sup>2</sup> of a church.

Furthermore, we decree that when a church or churchyard shall have been profaned by the shedding of blood or of sexual seed, if this church or churchyard have been profaned by the rector or the vicar or a parishioner of the said church, or by any other person whatsoever, he who profaned it, provided he be solvent, shall pay the dues in respect of the reconciliation of this church or churchyard. But if either have been profaned

<sup>1</sup> *Falsiter determinantes scienter.*

<sup>2</sup> A penitent was reconciled to the Church when through absolution he was restored to his former place in the communion of the faithful. A church was reconciled (not reconsecrated) when after profanation it was purified by special rites and services.

by some one who has nowise compeared, or has perchance compeared but has been found to be non-solvent, the rector of this parish or his vicar, if there be both in the said parish, shall provide the dues in respect of the reconciliation in this connection, at their own and the parishioners' expense in equal proportions, since it is their common interest, with reservation also to them of the right of raising an action against the desecrator. Now when there are a rector and a vicar in the same parish, the one half of the dues shall be paid by them in proportion to their respective incomes, and the other half shall be paid by the parishioners themselves, and if need be, they shall be compelled by ecclesiastical censure. Also we interdict, under pain of excommunication in force from this time forth, any one from daring in the future to have dances, or to hold wrestling matches, or to hold or engage in any other kind of unseemly sports in churches or in churchyards at any festivals or seasons whatsoever, since the occasion of profaning churches or churchyards has been wont to arise from such causes.<sup>1</sup>

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<sup>1</sup> Dr. Robertson regarded this statute as 'probably' a synodal statute of St. Andrews diocese, for the reason given in his Preface, vol. i. p. clxxxv.

## [Provincial and Synodal Statute of XVth Century.]

(165) [What days ought to be observed by resting from servile work by clergy and people.]

*Nota bene.* These days ought to be solemnly observed with an obligation of resting from servile work every year by clergy and people in terms of a provincial and synodal statute :—

First of all, in January: the feast of the Circumcision; the feast of Epiphany.

In February: the Purification of Blessed Mary; the feast of St. Matthias the apostle.

In March: the feast of the Annunciation of the Blessed Mary only.

In April: the day of St. Mark the evangelist only.

In May: the day of the apostles Philip and James; the Invention of the Holy Cross.

In June: the day of St. Barnabas the apostle; the Nativity of St. John Baptist; the day of the apostles Peter and Paul.

In July: the feast of Visitation of Blessed Mary the Virgin; the day of St. Mary Magdalene; the day of St. James the apostle.

In August: the day of St. Peter ad Vincula; the day of St. Lawrence; the day of the Assumption of the Blessed Mary; the day of St. Bartholomew the apostle.

In September: the Nativity of Blessed Mary; the Exaltation of the Holy Cross; the day of St. Matthew the apostle and evangelist; the day of St. Michael the archangel.

In October: the day of St. Luke the evangelist; the day of the apostles Simon and Jude.

In November: the feast of All Saints; St. Martin's day; St. Andrew the apostle's day.

In December: the Conception of the Blessed Mary; St. Thomas the apostle's day; Christmas day; St. Stephen's day; St. John the apostle and evangelist's day; Holy Innocents' day; and the day of St. Thomas of Canterbury, archbishop and martyr.

And no other days are to be observed as by precept of the

church except Good Friday, to wit, the proper of the Passion (since it was much more profitable that he died for us than that he was born; and no greater work is God revealed to have done than what he did on that day by enduring such sore suffering in himself for us: and also since on the work of that day is founded all the world's salvation, without which all the other festivals would be in vain): Easter Sunday with the three following days: our Lord's Ascension: Whitsunday with the three following days: the feast of the place: the feast of Corpus Christi: the feast of the dedication of the parish [church]: and Sundays.

Give still further diligent heed. On these days we ought to fast:—During the whole of Lent with the exception of Sundays; on the Ember days, and when these occur is known by the following rhyme:—

Ash-Wednesday and Whitsunday, St. Cross, St. Lucy eke,  
Make Wednesday that follows each fall in an Ember-week.

On five vigils of St. Mary's festivals, to wit: the Purification; the Annunciation; the Assumption; the Nativity; and the Conception. Fasting is also to be urged on the eve of the Visitation of St. Mary; on the eves of these Apostles' feasts, to wit: Andrew, Thomas, Matthias, Peter and Paul, James, Bartholomew, Matthew, Simon and Jude. On the vigils, moreover, of these feasts, to wit: Christmas day, Whitsunday, the Nativity of St. John the Baptist, St. Lawrence's day, All Saints' day. Also if any vigil fall on a Sunday we must fast on the Saturday before and never on the Sunday. Still further, we are commanded at least to abstain from flesh meats on the [eve of the] feast of St. Mark when it falls outside of Easter week, and on the Rogation days.

## [Provincial Synod and General Council, 1420.]

(166) Declaration in respect of the canonical portion due on account of the confirmation of testaments.

In the name of God, Amen. Let all know to whose knowledge the present letters shall have come that in the year one thousand four hundred and twenty years from our Lord's Incarnation in the thirteenth indiction on the sixteenth day of the month of July in the third year of the pontificate of the most holy father and lord in Christ, our Lord Martin, by divine providence fifth pope of that name, there assembled in the church of the friars preachers at Perth a provincial synod and general council of the clergy of the realm of Scotland according to custom. In which council after mass and the invocation of the Holy Ghost and sermon to the clergy there was unanimously elected to be conservator of privileges, the reverend father in Christ our lord William, by the grace of God bishop of Dunblane: there being present the fathers in Christ the lord bishops by the grace of God Henry of St. Andrews, William of Glasgow, Robert of Dunkeld, Gilbert of Aberdeen, Walter of Brechin: also the proctors of the lord bishops Henry of Moray, Thomas of Whithorn, Alexander of Caithness and John elect and confirmed of Ross: there being present also the venerable fathers the prior of St. Andrews and the abbots of the monasteries of Cambuskenneth, of Lindores, of Cupar, of Newbattle, and the proctors of the abbots of Dunfermline, of Kelso, of Melrose, of Holyrood, of Arbroath, of Jedburgh, of Dryburgh, and of Paisley:<sup>1</sup> as also very many deans, archdeacons, priors of monasteries, and the major part of the clergy who are wont to assemble at a council and synod general. After the privileges and statutes of the church had been read over, and the council continued, the foresaid lord conservator requested that a declaration be made as to what custom was

<sup>1</sup> In the Latin text the corresponding (vernacular) names are spelt Camyskynnet, Lundoris, Newbottle, Dunfermlynge, Calcow, Melross, Aberbroith, Ghedworth, Driburch, Paslate.



wont to be observed in the confirmation of testaments in times bygone in the several dioceses. And he insisted on this declaration being made by the senior members of the clergy of the several dioceses on their consciences with an oath on the Holy Gospels of God. And when they had all considered the matter, they unanimously declared that, from so far back that there is no memory of man to the contrary, bishops and those holding the jurisdiction of an ordinary have been wont to confirm the testaments and the codicils of those who die testate in their respective sees and to appoint executors to those who die intestate: and further, to cause sequesterate the effects of deceased persons until their wills should have been presented to the ordinaries, and confirmed by them if lawful. Item they have been wont to require all executors both of persons leaving wills and of persons dying intestate, after they have taken or have promised to take the oath *De fidei*, further to swear that they will faithfully perform as far as in them lies all the reasonable intentions of the deceased: item that they will be ready to render to the ordinary and all others concerned an account of the administration committed to them, whenever they are called upon or formally summoned thereanent. Which premises they affirmed were notour, and indisputably observed, and recognised by public assent and common report. And whereas the question was raised as to the quota to be paid, it was decided that it was the practice to divide the personal effects of the deceased into three equal portions, whereof, the debts being first paid, if there were wife and children, the wife was in use to have one-third of the moveable goods, and the children another third: and of the third part which remained the executors were wont to dispose for funeral expenses and the soul of the deceased and in payment of legacies: and out of this third or dead's part the executors were wont to pay twelve pence per pound to the ordinaries for their confirmation of the testament and services connected therewith, or at least compound with them for the same. And this usage as being praiseworthy, reasonable, in use and wont, and approved, the conservator ordered to be observed by the clergy and the laity; asking the said bishops present, with the assembly of the synod, to confirm the present declaration with their authentic seals.

These things were done in the council aforesaid in the year, indiction, month, day and pontificate abovementioned. Witnesses the foresaid lord bishops, who appended their seals, also Masters Thomas of Lawadir<sup>1</sup> and John Brekbell, notaries public, who were likewise called and cited for the premisses.

[General Council, 1459.]

- (167) [Declaration of the ancient royal custom in presentations to benefices during the vacancies of sees.]

To all sons of holy mother church to whose knowledge the present letters shall come, Thomas, by the grace of God and of the apostolic see Bishop of Aberdeen and conservator of the privileges of the Church of Scotland, wishes health in the Lord, and to the presents unhesitating trust to be given. Whereas it is a pious duty imposed by equity and justice, and dictated by the pages of canon and civil law, to bear testimony to the truth in those matters at least which should be recorded for a remembrance in times to come, but about which formerly doubts had been raised. Hence it is that while we were presiding as is wont in a council of the clergy of the church aforesaid, holden at Perth on the year and day hereunder written, there compeared before us on the part of the most illustrious prince and lord, our most illustrious lord, James II., King of Scots, a noble and puissant gentleman, Sir Patrick le Grahame, knight, and Master Archibald Quhitelaw, commissioners, as they said, from his majesty the king, specially deputed for the matter hereinafter mentioned; and they most urgently requested from us and the clergy present with us as representatives of the council a declaration of the ancient royal custom in presentations to benefices during vacancies in [bishops'] sees, which they asserted had been previously made known to his highness in a general council of the clergy, holden at Perth A.D. 1457: and assenting as it behoved us with due reverence to the suit of the commissioners aforesaid on the subject set forth

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<sup>1</sup> Lauder.

in their petition, we made diligent inquest of clerks and the clergy from amongst those who were then present, who, being interrogated upon oath, unanimously deposed and for themselves declared that in the council abovementioned, *videlicet* in A.D. 1457, our most illustrious king aforesaid possessed by ancient and primitive use the right of presenting to all benefices within the realm of Scotland appertaining to ecclesiastical patronage and ordinaries' collation falling void in any manner of way from the time that sees become vacant till bishops are admitted to their temporality, and of presenting to benefices bestowed by election, even though they be the greater benefices next after episcopal sees, and to other benefices generally or specially reserved in any manner whatever. And we attest this in the Lord to all whom it concerns, or whom it shall at all concern in the future by the tenor of these presents. In faith and testimony whereof all and sundry, at the instance and request of the commissioners aforesaid in the king's name being present, and demanding these our letters for themselves for future remembrance, we have caused these our letters-patent to be made, subscribed and signed by the signs<sup>1</sup> and subscriptions of the notaries underwritten, and confirmed by the appending of our seal at Perth, the nineteenth day of the month of July, and the last day of the council aforesaid, A.D. 1459, the seventh indiction, the first year of the pontificate of the most holy father in Christ and lord, our lord by divine providence, Pope Pius II., there being present at the premisses the reverend father in Christ and lord, George, by divine mercy Lord Bishop of Brechin, chancellor of Scotland; and these venerable and honourable ecclesiastics,<sup>2</sup> Master Walter Stewart, archdeacon of St. Andrews; Master Thomas Vaus, dean of Glasgow; Master Lawrence Piot, archdeacon of Aberdeen; and Master Martin Vaus, with many others, etc.

Collated with the copies of Donald Rede, scribe to the said council, and of John Patrick, notary public.

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<sup>1</sup> See Statute 214, and note.

<sup>2</sup> *Venerabilibus viris et dominis.*

Provincial Council holden by the Prelates and  
Clergy of the realm of Scotland at Edinburgh,  
A.D. 1549.

Sound advice did St. Paul give to us that we who are recognised as the vicegerents of himself and the other apostles should first and foremost strive to accommodate ourselves to this precept: '*Take heed,*' saith he, '*unto yourselves and to all the flock in the which the Holy Ghost hath set you as bishops, to rule the church of God which he purchased with his own blood.*'<sup>1</sup> Wherefore the present convention of the ordinaries, prelates, and other ecclesiastics and clergy of this realm has been assembled in the Holy Ghost conformably with this precept of the apostle for the glory of God to restore tranquillity and preserve complete unity in the ecclesiastical estate: intently observing how many heresies cruelly assail the Lord's flocks committed to their pastoral care; and wishing utterly to extirpate these same, as it were, from the very roots, it has resolved that it should follow the example of the prudent physician, and first of all seek by careful study to discover the causes and occasions of the sore maladies wherewith the morals of churchmen have now for a long time been corrupted, and thereafter take thought for and provide suitable remedies. And whereas there appear to have been mainly two causes and roots of evils which have stirred up among us so great dissensions and occasions of heresies, to wit, the corruption of morals and profane lewdness of life in churchmen of almost all ranks, together with crass ignorance of literature and of all the liberal arts<sup>2</sup>—and from these two sources principally spring many abuses: this holy synod and provincial council has determined to apply remedies and put a check on these mischiefs so far as it can adequately to the exigency of the times. Wherefore, to the praise and glory of Almighty God, for the reformation of morals in the Church of Scotland, and for the extirpation of heresies, there was holden and constituted on Wednesday, the

<sup>1</sup> Acts xx. 28, Vulgate.    <sup>2</sup> *Bonarum literarum et artium omnium crassa inscitia.*

twenty-seventh of the month of November, in the year of our Lord one thousand five hundred and forty-nine, in the church of the Friars Preachers at Edinburgh, in the diocese of St. Andrews, an assembly of the most reverend and the reverend and venerable fathers in Christ and lords, the ordinaries, prelates, and other distinguished and exalted churchmen and clergy under-written, constituting and representing for the time being a general convention of this realm and provincial council of archbishops and bishops, ordinaries, prelates, and other churchmen and clergy; the venerable and most reverend father in Christ and lord, John,<sup>1</sup> Archbishop of St. Andrews, primate of the whole realm of Scotland, Legatus Natus, and abbot of the monastery of Paisley, summoning and presiding over the council.

(168) Names of bishops, vicars general of vacant sees, abbots, priors, commendators, doctors, licentiates, and bachelors in theology.

The following are the bishops :

William of Aberdeen.

Patrick of Moray, commendator of Scone.

Andrew of Whithorn, and [dean] of Stirling chapel royal.

William of Dunblane.

Robert of Orkney, commendator of Kinloss.

William, elect and confirmed of Lismore.

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<sup>1</sup> The new light was mingled with the old at this council. John Hamilton, last Archbishop of St. Andrews, had succeeded Cardinal Beaton (murdered in 1546), and was destined to perish on the scaffold, a representative of the old order. James, Commendator of St. Andrews, was afterwards the famous Earl of Moray and reforming regent of the kingdom. Wynram, his sub-prior, preached at the trial of George Wishart three years before this date: he was to become a pillar of the Reformed Church. Gryson and Gresouin of this statute is the Greyson of Statute 261, and is described in a St. Andrews charter of 8th and 14th April 1561 as *Frater Johannes Gresoun, sacre theologie professor, fratrum ordinis predicatorum intra regnum Scocie prior provincialis*; for his recantation, see *Register of St. Andrews Kirk-Session*, i. 16-18. Robert Reid, Bishop of Orkney, was, in virtue of his bequest, the first founder of Edinburgh University. Quintin, Abbot of Crossraguel since 1547, was to hold a famous disputation with Knox a dozen years later. John Mair (Mayr) was the famous Major, schoolman and historian, professor successively at Paris, Glasgow, and St. Andrews, and teacher of Patrick Hamilton, Buchanan, and Knox.



## Vicars general of vacant sees :

Master Gavin Hamiltoun, dean of the Metropolitan Church of Glasgow, and vicar general of that see, being vacant.  
 Master James Hepburn, dean of Dunkeld, and vicar general of that see, being vacant.

## Abbots, priors, and commendators :

James, commendator of the priory of the primatial see of St. Andrews.<sup>1</sup>  
 James, commendator of Kelso and Melrose.  
 George, commendator of Dunfermline, archdeacon of the primatial church of St. Andrews.  
 Malcolm, prior of Whithorn.  
 Donald, abbot of Cupar.  
 Quintin, abbot of Crossraguel.  
 Walter, abbot of Glenluce.  
 Alexander, prior of Pluscarden.  
 William, commendator of Culross.  
 James, abbot of Neubattle.  
 Adam, abbot of Dundrennan.  
 Robert, abbot of Deer.  
 James, prior of Monymusk.

## Doctors in theology, licentiates, and bachelors :

Master Peter Sacellanus,<sup>2</sup> canon and provost coadjutor of the college of St. Salvator in the city of St. Andrews, doctor in theology.  
 Master John Gryson, professor of Holy Scripture.  
 Master John Winram, canon regular and subprior of the primatial church of St. Andrews, doctor in theology.  
 Friar Richard Marchell, Englishman, professor in divinity.  
 Friar Robert Liech, of the order of Preachers, licentiate in theology.  
 Master William Cranstoun, provost of Setoun, licentiate in theology.

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<sup>1</sup> The commendator of St. Andrews, afterwards Regent and Reformer, was at this date a boy about eighteen, having been made commendator of a priory in 1538 when a child under seven ! James of Kelso and Melrose was a somewhat older half-brother. Other bastards of the same king, James v., were the prior of Holyrood, the prior of Coldingham, and the prior of the Carthusians of Perth.

<sup>2</sup> Peter Cheplane Latinised his name *Capellanus* (at the Borthwick trial in 1540 ; see *Register of St. Andrews Kirk Session*, vol. i. p. 93), as well as *Sacellanus* 'chaplain of a *Sacellum*').

Master Alexander Anderson, sub-primar of the college of Aberdeen University, licentiate in theology.

Master Alexander Dick, bachelor in Holy Scripture.

Master John Mayr, dean of the faculty of theology in the University of St. Andrews, and Martin Balfour, doctors in theology, being stricken in years, aged and infirm, were represented by their proctors.

(169) Names of religious and beneficed seculars, and of the notary :—

Of the order of Friars Preachers :

John Gresouin, provincial.

Friar Robert Liech.

Friar Andrew Abircromby.

Of the order of Friars Minors Observants :

Friar John Paterson, minister general.

Friar Andrew Cottis, guardian of said order at St. Andrews

Friar James Winchester, guardian at Perth.

Friar John Scott.

Of the order of Conventuals.<sup>1</sup>

Of the order of Augustinians.

Of the order of the Holy Trinity for redemption of captives.

Of the order of Carmelites.

Beneficed secular clergy :

Master John Spittell, provost of St. Mary-in-the-Fields, official of St. Andrews principal, and rector of the University of St. Andrews.

Master Abraham Creichtoun, provost of Dunglass, official of St. Andrews in the archdeaconry of Lothian.

Master James Hamiltoun, dean of Brechin.

Master John Sinclare, dean of Restalrig.

Master George Hay, dean of Dunbar.

Master William Lamb, rector of Conveth.<sup>2</sup>

Master John Thornetoun, precentor of Moray.

Master John Stevinstoun, precentor of Glasgow.

Sir George Clapperton, provost of the most Holy Trinity,<sup>3</sup> near Edinburgh.

<sup>1</sup> The Observants were the stricter, the Conventuals the less strict, branch of the Franciscans. In four orders the names of representatives have been omitted.

<sup>2</sup> Conveth or Convinth, an Inverness parish, now conjoined with Kiltarlity.

<sup>3</sup> Trinity College Church and Hospital just without the old city limits. For Clapperton, see Laing's Knox, vol. i. p. 45.

Master Patrick Myrtonne, archdeacon of Aberdeen.  
 Master Alexander Erskyne, subdean and official of Dunkeld.  
 Master Archibald Boyd, provost of Dalkeith.  
 Master Alexander Forret, provost of Fowlis.  
 Master John Maccaw, archdeacon of Lismore.  
 Master Arthur Talzefere, canon of Aberdeen.  
 Sir Nicholas Ross, provost of Tain.  
 Sir Andrew Dicksoune, canon of Dunkeld.  
 Sir Hugh Currye, commendator of Strathfillan.  
 Sir Andrew David, scholar and student in theology.  
 Master John Macquin, lecturer on holy Scripture.  
 Sir Robert Lidel, subprior of Melrose, of the Cistercian order.

Secretary and notary at the Council, Andrew Oliphant.<sup>1</sup>

These all being assembled in the said church of the Friars Preachers at Edinburgh, on the mandate of the most reverend lord archbishop, primate and legatus natus, who presided, first of all high mass was sung for the outpouring of divine grace and for the happy furtherance and success of the business to be transacted in the present council or synod; and when it was finished, going out with one accord, they entered the hall or refectory of the said friars, where, when they had seated themselves in due order and removed all who had no right to be present, an address was delivered to them by . . . , a reverend and very learned licentiate in theology.

(170) A brief preface to this provincial council: approval of the statutes published at Linlithgow.<sup>2</sup>

And when that address or exhortation was ended, the said synod caused to be read and re-read by the notary of the synod word by word, in a distinct and loud voice, the acts, statutes, and ordinances passed in the previous general convention or provincial council celebrated by them at Linlithgow in the month of August last bypast, and the things ordered and enjoined to

<sup>1</sup> 'Sir,' originally the translation of *dominus*, used of a Bachelor as distinguished from a Master (*magister*) of Arts, came to be extended to other priests and curates. Marchell is the modern Marshall; Talzefere, Telfer (*z* for *y*, as in Menzies); Oliphant is Latinised Elephantus (see note to Statute 296).

<sup>2</sup> For this council meeting see note at page 148.

be done by it in the interim, so that they might be understood by every member and subject of this council, etc. All which forenamed statutes, as having been previously decreed and enacted, the present holy synod unanimously approved and ratified; but it expanded and amplified some of them, while others it framed anew as follows.

Here follow the acts passed in the present Council and its various sessions, and in the first place concerning the reformation of morals.

(171) Of the incontinence of churchmen and of concubinaries.

The present synod, carefully considering how evident it is that very grievous scandals have arisen from the incontinence of churchmen, has therefore for the removal of this blot enacted that the decree of the Council of Basel *De Concubinariis*, passed in its twentieth session, be rigidly observed and given effect to. Now the tenor of this decree is in these words:

‘1. This sacred and general Synod of Basel lawfully assembled in the Holy Spirit, and representing the universal church, has decreed for perpetual memory hereof that any cleric of whatever state, rank, religious order, dignity he may be, even though he be of episcopal or other kind of pre-eminence whatsoever, who shall be notoriously the keeper of a concubine, after notice of this constitution which it is presumed he has received during the course of two months after the publication of the same in cathedral churches, which the diocesans themselves are by all means bound to make as soon as the same constitution has come to their knowledge, then let him be *ipso facto* suspended from the enjoyment of all incomes from his benefices during the space of three months, which incomes let his superior apply to the building or other manifest advantage of the churches from which such incomes are derived: Also his superiors shall be held bound straightway to admonish such notorious keeper of a concubine, as soon as it is known he is such, to put away his concubine in the shortest possible space of time. But if he has not dismissed her, or if after dismissal, he has openly taken her to him again, or some other woman, this holy synod gives order utterly to

‘deprive him of all his benefices : And furthermore, these notour keepers of concubines, even after their dismissal of their concubines and their amendment of life, shall be disqualified for receiving dignities, benefices, or offices, until a dispensation has been granted to them by their superiors ; but if after dispensation, returning like dogs to their vomit, they resume such open concubinage, they shall be bereft of the hope of any dispensation and utterly disqualified for the privileges abovenamed.’

(172) Of the punishment of the ordinary who is negligent ; and who [they are who] are open concubinaries.

‘But if those to whom appertains the correction of such offences neglect to punish such persons as is described above, the superior of the former shall, in all possible ways, inflict condign punishment as well upon the former for their neglect as upon the latter for their concubinage. And such as fail to punish such offender, or are in ill repute for this crime, shall be severely proceeded against in provincial and synodal councils, even by suspension from collation to benefices or other condign punishment. And if those whose deprivation appertains to the sovereign pontiff are found by provincial councils or their superiors worthy of deprivation on account of public concubinage, they shall be immediately delated to the sovereign pontiff with the process of inquest. The same diligent inquest shall be made in all general and provincial chapters as regards those subject to their jurisdiction ; and the other penalties enacted against the aforesaid public keepers of concubines, and against those who are not publicly keepers of concubines, shall remain in force.

‘Now by open keepers of concubines are to be understood not only those whose concubinage is notorious by sentence passed or by confession made in a court of law or by evidence of the fact which no subterfuge can conceal ; but he is a public concubinary who keeps a woman suspected of and ill-famed for incontinence, and when admonished by his superior does not utterly put her away.’ With this addition made now at the present council : That the ordinaries of dioceses shall come down upon clerics who are not beneficed, but have been



admitted to sacred orders, with discretionary penalties adapted to the standing of the persons disgracing themselves, the contempt [they show for authority], and their persistence in the like offences.

(173) A money penalty not to be exacted for offences.

‘Now whereas some who have ecclesiastical jurisdiction in certain countries do not blush to receive money payment from concubinaries, allowing them meanwhile to wallow in such filthiness; wherefore this holy synod enacts, under pain of eternal anathema, that they never hereafter tolerate or overlook such crimes in any manner of way in consequence of any compact, composition, or hope of any returns in money; otherwise, in addition to the foresaid penalty for negligence, they shall without fail be obliged and compelled to restore to pious uses the double of what they have received on that score. Also the prelates shall strive in every manner of way, even if need be with the help of the secular arm, to keep the actual concubines or women suspected to be such away from those under their jurisdiction; and they shall not suffer the sons born of such concubinage to dwell in the houses of their fathers. Further, this holy synod orders this constitution to be published in the aforesaid synods and chapters, and every prelate earnestly to admonish those under his jurisdiction to put away their concubines. Moreover, it enjoins on all secular persons, even though they have the illustrious rank of kings, not to place any kind of obstacle, under colour of whatsoever pretext, in the way of prelates who, by virtue of their office, prosecute their subordinates for such concubinage. And since every crime of fornication has been forbidden by the law of God, and must needs be avoided under pain of mortal sin, it admonishes all laymen, whether married or unmarried, likewise to abstain from concubinage. For he is peculiarly blameworthy who has a wife and has recourse to a strange woman. But let him who is unmarried and cannot be continent follow the apostle’s advice and take a wife. Now for the observance of this divine precept, those whose duty it is should zealously labour both by salutary admonitions and other canonical remedies.’

And what is contained in the said foregoing decree, this also has the present convention decreed and ordained to be observed also by the nuns of this realm, in respect of the fore-said regulations, so far as they are applicable.

(174) Clergy shall not keep in their company the offspring of their concubinage.

Item this synod exhorts that neither prelates nor their subordinate clergy keep their offspring born of concubinage in their company, nor suffer them directly or indirectly to be promoted in their churches, nor under colour of any pretext to marry their daughters to barons or make their sons barons out of the patrimony of Christ.

(175) Neither clergy nor monks shall engage in secular pursuits.

Likewise it is statute that no cleric having the means of an honourable livelihood according to his own calling engage in secular pursuits, especially by trading, either for the sake of gain buying that he may sell over again at a profit what he has purchased, or by leasing farms from others, allow himself to be withdrawn by farm work from spiritual exercises to the neglect of his proper cure of souls.

(176) Of churchmen's dress.

Item beneficed churchmen and clerks in holy orders shall according to the ancient custom of the clergy wear only round birettas, and shall always take off their caps in churches, especially in choirs and in time of divine service; and shall not dress, as for example, in top-boots and double-breasted or oddly-cut coats, or [coats] of forbidden colours, as yellow, green, and such kinds of parti-colour; and shall wear long cassocks reaching down to the ankle in churches, cities, towns, and larger villages, but on journeys short cassocks fitted with sleeves, regard, however, being had to the exigencies of time and place; they shall have white shirts with white seams: under pain of suspension in the case of priests and of excommunication in the case of other churchmen—[sentences] to be pronounced by officials of dioceses, commissaries, and deans, from which they shall not be loosed until they have first given caution for future obedience under a fine of varying amount to be inflicted at the

discretion of the judge, according to the rank of the offenders, for their first offence; and with each successive act of disobedience shall the fine also be increased. Into which offences the several deans in their visitations, and whenever there is need, shall diligently inquire; and whoever are found guilty at the end of two months after the publication of the present statute shall be punished as above. Now, if the deans fail in the afore-said, or be proved to be negligent of the ordinance, then the officials or commissaries of the ordinaries, shall at their own discretion punish them with still greater severity.

(177) Against those who grow beards and have no tonsure.

Convinced by the various proofs and reasons that have been set forth with regard to the wearing of beards, this holy convention has decreed, that the ordinaries of the dioceses shall earnestly exhort all and sundry of clerical condition and churchmen in this province to have some regard for their standing and profession, and see to the shaving of their beards, so that the frequent railleries levelled at them for wearing beards may be put an end to, and that they as clergymen may be distinguishable from laymen; and insist that all churchmen, at least those admitted to holy orders, shall have a becoming tonsure within their crowns [of hair].

(178) Of temperance in churchmen's diet.

Item the present convention exhorts all prelates and other beneficed churchmen of this realm, that hereafter they fare more frugally and temperately at table by the avoiding, in accordance with each one's standing and dignity, delicacy and superfluity in meats and drinks; that they also succour the poor in their necessities more bountifully and generously; and that they abstain from public violation both by themselves and their households of the fasts prescribed by the church, so that henceforth their evil example in this point may not be a stumbling block to the laity.

(179) The reading of the holy Scriptures at table.

And it entreats that at churchmen's tables more frequent readings be made of the holy Scriptures, according to the

decree of the Third Council of Toledo,<sup>1</sup> of which this is the tenor: 'For the reverence of God and the honour of priests 'the whole synod has decreed, that, whereas idle tales are 'wont to be often intruded at table, the reading of the holy 'Scriptures shall be introduced at every priest's meal.' For hereby both souls are edified to good purpose and unprofitable tales debarred.

(180) Of sobriety in churchmen's dress.

Item all prelates and churchmen are to be exhorted to wear henceforth graver attire than they have been wont to do, which should be of wool, of appropriate colour, rather than of silk, and should itself give an impression of gravity; and let them be mindful of that verse of St. Bernard's,<sup>2</sup> to wit:

'Of gold on bridles, tell us, ye priests, the use.'

(181) Of churchmen's servants.

Prelates shall have a care that they maintain and keep as their personal servants and permanent domestics, such as are not reputed to be gamblers, recognised fornicators, drunkards, brawlers, buffoons, night-walkers, or blasphemers of God's name, and addicted to profane swearing; but who are believed to be Catholics of virtuous life, good morals, and respectable character, an example to the good and a terror to evil-doers. Since, as saith Bonaventure, the misbehaviour of the household is the master's disgrace.

(182) Of the visitation of monasteries and inquiry concerning monks who are exempt.

It is now statute moreover, that the several ordinaries of the dioceses shall visit, as soon as they can, the convents of canons-regular, non-exempt monks, and of nuns; to the end

<sup>1</sup> The Third Catholic Synod of Toledo (of twenty-five) was that held in the year 589. Of its twenty-three canons this is the seventh; but it was doubtless taken by the Scottish Council straight from the *Decretum Gratiani*, I. dist. xlv. c. ii.

<sup>2</sup> The fathers obviously thought the verse St. Bernard's own—*illius versiculi Divi Bernardi*: really, as has been noted in the Introduction, it is an adaptation of a line from the second Satire of Persius, a line Bernard repeatedly quoted as a 'heathen observation,' but relevant to the luxurious ways of contemporary churchmen.

that what they shall find to need amendment therein may be reported by them in the council or convention next to come in a minute of their visitation. But in respect of exempt houses, that whoever on inquiry in the neighbouring parishes shall from common talk and rumour have learnt anything against the decorum of monastic life, the due upkeep of the place, and the administration of the revenues, shall likewise inform the future council, that a fitting remedy may be provided accordingly. Monks also claiming to have exemptions in such monasteries shall show these exemptions, together with a statement of their numbers; while commendators, and those who hold monasteries *in commendam*, shall show their letters of appointment in the said future council with a view to the consideration and ascertainment as to what their obligations are, and what deference is to be paid to their privileges in terms of their letters of appointment. And in this connection, whereas it is manifest that the discipline of canons-regular and of monks has been weakened and relaxed in great part by the negligence of those whose duty it is to exercise supervision over them; the present convention exhorts in the Lord all and sundry the abbots, priors, commendators, and administrators of exempt monasteries, as far as they collectively and severally can, to strive, as becomes good pastors, to reform the life, morals, piety, and learning of monks, and to bring them back to the first state of the monastic institution, that so piety may flourish in their midst, and the murmurs of the outside world be silenced.

(183) Of the recalling of apostate monks.

Likewise the present convention commands all and sundry the abbots, priors, commendators, administrators, ministers, and superiors of religious houses, one and all, to use all manner of diligence for the discovery and apprehension of their apostates and fugitives who have escaped beyond the bounds of their jurisdiction; to implore the help of the ordinaries of those dioceses in which they have taken refuge, to the end that they may be arrested and brought back; and if this cannot be accomplished by the ordinaries themselves, by their intervention to call in the aid of the civil power.



(184) Of the recall in like manner of apostate nuns.

Item it is statute, that by authority of the ordinary all prioresses of nuns shall be compelled as soon as possible to gather together the dispersed nuns of their houses, to the end they may live and board with themselves, or be lodged in other quiet nunneries of this realm, and there boarded at the expense of their prioress.

(185) Of crimes which must be punished by appeal to the secular arm.

Item concerning adulterous, incestuous, and notoriously sacrilegious persons, this convention ordains that first of all they shall be charitably admonished by the exhortation of their prelates to amendment of life; and, if nevertheless they thereafter continue to defile themselves with scandalous crimes, then as soon as it can be managed, denunciations shall be fulminated against them accompanied with all the censures of the church, even with interdict, to which intent also, if need be, the aid of the secular arm shall be invoked. And as to public scandals of this sort, it orders also diligent inquisition to be made by the deans; which inquest, if it cannot be made in the parishes of the offenders, must be made at least in the adjoining parishes.

(186) Of visitations.

Furthermore, whereas it is alleged that such public scandals as have just been mentioned, both of greater and less enormity, are sometimes concealed and passed over by the deans and other visitors, for the reason that they do not blush to take bribes from concubine-keeping and adulterous persons, and so are made to defile themselves with such filthiness, this convention has enacted that the deans, before they hold office, shall promise upon oath faithfully to discharge its duties in every respect; and when they delate the more heinous offences of the said [offenders] to the commissaries, they shall not be received by them until they have sworn anew that they are reporting to the commissaries all and sundry the more heinous offences, committed in public or in private, and brought to their knowledge whether by public or private inquisition, without favour or affection, supplication or bribe, no case whatever being overlooked; but

if they shall be found guilty of perjury in the premisses, they shall suffer loss of office, and such other penalties as the ordinary at his discretion shall inflict; and into this last particular let the commissaries make careful inquiry, as they shall answer to the lord ordinary.

(187) That church glebes must not be granted in feu-farm or emphyteusis.<sup>1</sup>

Lest by the non-residence of vicars, rectors, and prebendaries the functions of those who minister in the cure of souls and the sacraments of the church be neglected, it is enacted that no infeftments or leases in feu-farm, or tacks for a long time, of any manner of glebes or church lands, rectories, or vicarages be henceforth granted by the rectors or vicars in person, unless for good reasons previously considered, section by section, in general or provincial council or synod, and found to tend to the benefit of these same churches, and not only to the private advantage of the individual possessors, but also to the advantage of their successors in perpetuity; or else that such infeftments or leases be nowise admitted or authorised by the ordinaries or their chapters; and if they have been made, that they be reputed null. And as regards long leases for nineteen years of and over the produce and the tithes of sheaves appertaining to the greater dignities next under the episcopal dignity, attached to cathedral churches, to the prebends and independent rectories, such as are not appropriated to the mensal<sup>2</sup> revenues of bishops and abbots, the present convention utterly forbids such leases to be granted until the constitution, commencement, and celebration of the next general convention or provincial council; and neither ordinaries nor chapters shall in the meantime admit or authorise any of these leases; and if it happen that any such have meanwhile been made they shall be null and void; and those who claim to have interests to the

<sup>1</sup> Emphyteusis (a term derived direct from Roman law) is defined by Stubbs as 'a perpetual right in a piece of land that is the property of another,' and by others as 'a hereditary lease.' It appears in Erskine's *Institutes of the Law of Scotland as emphyteos*, and is by Jamieson explained as 'a grant in feu-farm.'

<sup>2</sup> 'Mensal churches' were those whose revenues, in Scotland and Ireland especially, were appropriated to the maintenance of the bishops' and abbots' tables.

contrary of these premisses shall be heard at the next council, etc.

(188) Concerning reformation in the matter of instruction heretofore neglected, and preaching of God's word; and of a theologian to be attached to every church.

Maturely advised and adhering to the decrees of the Council of Trent<sup>1</sup> passed in its fifth session, for the repression of heresies and the edification of Christians in the words of evangelical doctrine, the present convention enacts and ordains that every bishop and local ordinary preach in person the word of God, according to the grace given to him by the Lord, in the flock committed to him, at least four times a year (unless hindered by lawful impediment), in addition to the statutory discourses delivered by other preachers licensed thereto. And if any ordinaries have hitherto exercised themselves too little in preaching, they shall fit themselves as soon as may be for the discharge of this duty, both by their own application and by the help of others who are skilled; and to this end they shall invite into their household and their company men learned in the holy Scriptures. Now the tenor of the act or decree of that council is in these words:

'The same sacred synod, adhering to the pious constitutions  
' of sovereign pontiffs and approved councils, and embracing  
' the same and adding to them, that the heavenly treasure of  
' the sacred books which the Holy Ghost has with the greatest  
' generosity delivered unto men may not lie neglected, hath  
' ordained and decreed that—in those churches where there is  
' found to be a prebend, prestimony<sup>2</sup> or other stipend, under  
' whatsoever name, destined for lecturers in sacred theology—  
' the bishops, archbishops, primates, and other ordinaries of  
' places, shall force and compel, even by withholding the  
' fruits, those who hold such prebend, prestimony, or stipend,  
' to expound and interpret the said sacred Scriptures either

<sup>1</sup> The quotation in Statutes 188-194 comprises the whole of the Decree on Reformation (in two chapters) passed in the fifth session of the Council of Trent (June 1546).

<sup>2</sup> In a prestimony the fund was allotted to the support of a priest, but was not erected into a benefice or title, or put under the authority of the ordinary, the patron retaining the superiorities.

‘ personally, if they be competent, or otherwise by a competent  
‘ substitute, to be chosen by the said bishops, archbishops,  
‘ primates, and other ordinaries of places. But for the future  
‘ such prebend, prestimony, or stipend shall not be bestowed  
‘ save on a competent person and those who can personally  
‘ discharge that office; and otherwise the provision made shall  
‘ be null and void.

‘ But in metropolitan or cathedral churches, if the city be  
‘ distinguished or populous, and also in collegiate churches in  
‘ any large town, even such as are not within [the jurisdic-  
‘ tion of] any diocese, provided the clergy be numerous there,  
‘ wherein there is found no such prebend, prestimony, or  
‘ stipend set aside in this manner, let the first prebend that  
‘ shall become vacant in any way soever, except by resignation,  
‘ and to which some other incompatible duty is not attached,  
‘ be understood to be *ipso facto* set apart and devoted to that  
‘ purpose for ever. And in case that in the said churches there  
‘ should not be any or any sufficient prebend, let the metro-  
‘ politan or the bishop himself, by assigning thereunto the  
‘ fruits of some simple benefice—the obligations thereto be-  
‘ longing being nevertheless discharged—or by the contributions  
‘ of the beneficed clergy of his city and diocese, or otherwise as  
‘ may be most convenient, provide in such wise, with the  
‘ advice of his chapter, as that the said lecture on sacred Scrip-  
‘ ture be had; yet so that whatsoever other lectures there may  
‘ be, whether established by custom or in any other way, be by  
‘ no means on that account omitted.’

(189) Of the master of grammar.

‘ As to churches whose annual revenues are slight, and  
‘ where the number of the clergy and laity is so small that a  
‘ lectureship of theology cannot be conveniently maintained  
‘ therein, let such at least have a master—to be chosen by the  
‘ bishop with the advice of the chapter—to teach grammar  
‘ gratuitously to clerics and other poor scholars, that so they  
‘ may afterwards with God’s blessing pass on to the said study  
‘ of sacred Scripture. And for this end either let the fruits of  
‘ some simple benefice be assigned to that master of grammar,  
‘ which fruits he shall receive so long as he continues teaching,

‘ provided, however, that the said benefice be not deprived of the duty due to it ; or let some suitable remuneration be paid out of the capitular or episcopal revenue ; or in fine let the bishop himself devise some other method suited to his church and diocese, that so this pious, useful, and profitable provision be not neglected under any colourable pretext whatever.

‘ In the monasteries of monks also let there be maintained in like manner a lectureship on sacred Scripture, where this can conveniently be done ; wherein if the abbots be negligent, let the bishops of the places, as the delegates herein of the Apostolic See, compel them thereto by suitable remedies. And in the convents of other regulars in which studies can conveniently flourish, let there be established in like manner a lectureship on sacred Scripture, which lectureship shall be assigned by the general or provincial chapters to the masters most worthy of it.

‘ In the grammar schools also wherein a lectureship so honourable and the most necessary of all has not hitherto been instituted, let it be established by the piety and charity of the most religious princes and governments for the defence and extension of the Catholic faith, and the preservation and propagation of sound doctrine ; and where such lectureship has once been instituted but been neglected, let it be restored.’

(190) How the public lecturer ought to be elected.

‘ And that impiety may not be disseminated under the semblance of piety, the same holy synod ordains that no one be admitted to this office of lecturing, whether in public or in private, without having been previously examined and approved of by the bishop of the place as to life, conversation, and knowledge ; which, however, is not to be understood of lecturers in cloisters of monks.’

(191) Privileges of students in theology.

‘ Furthermore, those who are teaching the said sacred Scripture, as long as they teach publicly in the schools, as also the scholars who are studying in those schools, shall fully enjoy and possess, though absent, all the privileges accorded by common law as to receipt of the fruits of their prebends and benefices.’



(192) Of the preaching of the word of God to the people.

‘But seeing that the preaching of the Gospel is no less  
‘ necessary to the Christian commonwealth than the lecturing  
‘ thereon, and whereas this is the principal duty of bishops ;  
‘ this same holy synod hath resolved and decreed that all  
‘ bishops, archbishops, primates and all other prelates of the  
‘ churches shall be held bound, if they be not lawfully hin-  
‘ dered, personally to preach the holy gospel of Jesus Christ.  
‘ But if it should happen that bishops and the others aforesaid  
‘ be hindered by any lawful impediment they shall be bound,  
‘ in accordance with the form prescribed by the general  
‘ council, to appoint fit persons to discharge unto edification  
‘ this office of preaching. But if any one disrespectfully fail  
‘ to fulfil this precept let him be subjected to rigorous punish-  
‘ ment. Archpriests<sup>1</sup> also, curates, and all those who in any  
‘ manner soever hold any parochial or other churches which  
‘ have the cure of souls, shall, at least on the Lord’s days and  
‘ solemn feasts, either personally, or, if they be lawfully hindered,  
‘ by others who are competent, feed the people committed to  
‘ them with wholesome words according to their own capacity  
‘ and that of their people ; by teaching them the things which  
‘ it is necessary for all to know unto salvation, and by announc-  
‘ ing to them with brevity and simplicity of discourse the vices  
‘ they ought to avoid and the virtues they ought to follow  
‘ after, that they may escape everlasting punishment and  
‘ obtain the glory of heaven. But if any one of the above  
‘ neglect to discharge this duty—even though he may plead  
‘ that he is, on whatsoever ground, exempt from the jurisdiction  
‘ of the bishop, and even though the churches be said to be in  
‘ whatsoever way exempted or perhaps annexed or attached  
‘ to a monastery that is even outwith the diocese—let not the  
‘ watchful pastoral solicitude of the bishops be wanting, pro-  
‘ vided those churches be actually within their diocese ; lest  
‘ that word be fulfilled : “ The little ones have asked for bread,

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<sup>1</sup> Archipresbyter, the name once given to vicars of bishops in cathedral churches, usually the oldest of the priests attached to the Cathedral, was by this time a title of rural deans. After 1599 an archpriest was appointed by the Pope to govern the secular priests sent into England from the foreign seminaries.

‘ “and there was none to break it unto them.”<sup>1</sup> Wherefore if, after having been admonished by the bishop, they shall have failed in their duty for the space of three months they shall be compelled by ecclesiastical censures or otherwise at the discretion of the said bishop; so that even, if this seem expedient to him, a fair remuneration be paid out of the fruits of the benefices to some other person to discharge that office until the principal himself repents and fulfils his duty.’

‘ But should there be found to be any parochial churches subject to monasteries which are not in any diocese,<sup>2</sup> if the abbots and regular prelates be negligent in the matters aforesaid let them be compelled thereto by the metropolitans in whose provinces the said dioceses are situated, as being the delegates for this purpose of the Apostolic See; nor let custom, or exemption, or appeal, or protest, or action of recovery be of effect to impede the execution of this decree, until, as above, by a competent judge—who shall proceed summarily, and examine only into the truth of the matter of fact—the case has been taken cognizance of and decided.

‘ But regulars, of whatsoever order they may be, may not preach even in the churches of their own orders, unless they have been examined and approved of as regards their life, conversation, and doctrine by their own superiors, and [have] their licence; with which licence they shall be bound to present themselves personally before the bishops, and beg a blessing from them, before they begin to preach. But to preach in churches which are not those of their own orders, besides the licence of their own superiors, they shall be obliged to have also the licence of the bishop, without which they may not on any account preach in the said churches which belong not to their own orders; but bishops shall grant the said licence gratuitously.’

(193) Of preachers of false doctrine.

‘ But if, which God forbid! a preacher should spread errors

<sup>1</sup> Lam. iv. 4: ‘ The young children ask bread, and no man breaketh it unto them.’

<sup>2</sup> Monasteries exempted, like Melrose and Holyrood (subjected to the Archbishop of St. Andrews in 1472), from the jurisdiction of the bishop of the diocese within whose bounds they are geographically situated, and so not subject to any bishop. See note 3, p. 17.

‘or controversies amongst the people, the bishop shall interdict  
 ‘his preaching even though he preach in a monastery of his  
 ‘own or of another order; but if he preach heresies he shall  
 ‘proceed against him according to the prescription of the law  
 ‘or the custom of the place, even though the said preacher  
 ‘should plead that he is exempted by a general or special  
 ‘privilege; in which case the bishop shall proceed by apostolic  
 ‘authority, and in his capacity as delegate of the Apostolic  
 ‘See. But let bishops be careful that a preacher be not  
 ‘annoyed either by false accusations, or in any other way  
 ‘calumniously; or have any just cause of complaint against  
 ‘them. Furthermore, let bishops be on their guard not to  
 ‘permit any one—whether of those who, being regulars in  
 ‘name, live nevertheless out of their monasteries and the  
 ‘obedience of their religious house, or of secular priests, unless  
 ‘they be known to them, and are of approved morals and  
 ‘doctrine—to preach in their own city and diocese, even under  
 ‘the pretext of any privilege whatsoever, until the holy  
 ‘Apostolic See has been consulted by the said bishops thereon;  
 ‘from which see it is not likely that unworthy persons can  
 ‘extort any such privileges except by suppressing the truth or  
 ‘by uttering falsehood.’

(194) Of collectors of alms.

‘Those, however, who beg for alms—who are also commonly  
 ‘called Quæstuarii<sup>1</sup>—of whatsoever condition they may be,  
 ‘shall not in any way presume, either personally or by another,  
 ‘to preach; and contraveners shall, any privileges whatsoever  
 ‘notwithstanding, be without exception restrained by suitable  
 ‘remedies on the part of the bishops and ordinaries of the  
 ‘places.’

(195) That rectors and bishops preach in person four times  
 in the year.

And that in conformity with these regulations the people  
 may be instructed with more frequent discourses on God’s  
 word, it is enacted that rectors of parish churches—who, in

<sup>1</sup> *I.e.*, in Church Latin—for this was not a local statute, but passed at the Council of Trent for the whole Church; in English they were called Quæstuaries and Questors, but more usually Pardoners. See above, No. 49.

the judgment of the ordinary, shall be reckoned capable and suitable for preaching the elements of the faith to their parishioners—preach in person at least four times in the year according to the provincial and synodal statutes issued for preachers. But on those rectors who have been deemed young and ineligible for this function the ordinaries of the places shall lay the injunction that they render themselves capable as soon as practicable by studying in the public seminaries, and meanwhile arrange at their own expense for preaching by other preachers whom the ordinaries shall license, and for the discharge of their duties in all respects. But those who are elderly and no longer capable of being taught shall get this function performed in like manner by others whose preaching they must sanction by their own presence, and this over and above the ordinary instructions and discourses to be delivered by vicars or curates on every Lord's day, and possibly on the other greater feasts. But as regards rectories, monasteries, collegiate churches or other religious places united in social life or a common table, it is ordained that abbots, priors and commendators, administrators, provosts, deans, and prebendaries enjoying part of the revenues of rectories, shall take care that the people are instructed in the faith either by themselves, their subordinates, or others in their name, and see to it that this is done for their parishioners. And as regards prioresses of nuns subject to the Archbishop of St. Andrews, the synod has decreed in accordance with the decision of the Apostolic See that they are bound to the same under the penalties pronounced in the said provincial statute and the other statutes promulgated above: and it is decreed in this holy synod that these be published anew and inserted in these presents.

(196) That in every cathedral church there be a theologian and a professor of canon law.

Following up the subject of the preaching of the divine word, the council or convention enacts, for the maintenance of men learned and proficient in theology and pontifical law at cathedral churches or cities, that all and sundry the ordinaries of places have permanently at their cathedral churches

one theologian, a doctor, a licentiate, or a bachelor in theology, and in like manner a canonist who has qualified in pontifical law;<sup>1</sup> and that the theologian on every lecture-day,<sup>2</sup> at least once every week, publicly read and expound the holy Scriptures and preach as well in the said cathedral as in other churches, so that the bishop and the canons of the city can attend if they wish his exposition and discourse. And the canonist shall in like manner publicly expound canon law in the said church and city, and the canons and other clergy of the same city may attend his lectures. And for the maintenance of this theologian and canonist every ordinary shall allot some benefice, the first at his own disposition that shall be vacant within his diocese, and to the annual value for the theologian of a hundred pounds, and for the canonist of a hundred merks, in Scots money, for all time to come, as long as they and their successors shall continue in the same offices. Both of whom, theologian and canonist, shall commence to lecture and teach about the feast of St. Michael, the 29th day of September next to come. It is stipulated also by this synod that until there is a vacancy of the foresaid benefices to be bestowed for the purpose before mentioned that every ordinary give honourable maintenance at his own expense from the said feast of St. Michael to the aforesaid theologian and canonist at the rate and amount of the said sums.

(197) That in every monastery there be a theologian.

And with the same end in view, that the study of the holy Scriptures, and the virtues pleasing to God himself, may, as in time past, so now again flourish in monasteries, in conformity with the will of God, it is ordained that the several abbots, priors, commendators, administrators of the greater prelaties, find and maintain a theologian, either a regular or a secular, who every day as above shall be held bound to read the holy Scriptures within the walls of monasteries as shall be expedient for his hearers, and preach as foresaid is in the churches attached to the said monasteries. Prelates also when they

<sup>1</sup> *Jus pontificium* is here apparently used as tantamount to canon law, though properly it means only the division of it known as Papal law. See Introduction.

<sup>2</sup> *Omni die legibili*; on every day appointed for the purpose, apparently, and not as often every 'lawful day'; cf. *jour d'école*.



shall have benefices which are at their own disposition shall make provision for the maintenance of the said theologians and their successors out of these benefices to the value of a hundred merks.<sup>1</sup> But those who do not have benefices in their own power of disposition and presentation in this way, as is the case with prelates of the Cistercian order, shall see to it that at their own expense to the amount of the foresaid sum the said theologian is provided with an honourable maintenance according to the statutes of their own order; with the addition, however, of this proviso, that the customary alms given to mendicant and preaching friars be not withdrawn or lessened in consequence of the ordinance.

(198) From what monasteries how many are to be sent to literary studies.

Item that in the case of monasteries there may go forth from them and flourish anew men of letters and preachers eminent in sacred eloquence and the fruitful nurture of souls, this holy convention enjoins that from the monasteries of every diocese in this realm there be sent forth in proportion to the resources of the said monasteries two religious or one, having a special aptitude for literary studies and good natural abilities, to the nearest universities or to others as it may please them, there to remain for the space at least of four years engaged in the study of theology and holy Scripture. And on the completion of this period of study, there shall be sent to the said universities other religious as described, to devote themselves in like manner to literary studies.

The principal monasteries from which, in proportion to the number of inmates and the resources of the monasteries, religious are to be sent to literary studies, with the aforesaid end in view, are enumerated in the following specification:—

And first, from the diocese of St. Andrews.

From the Monastery of the Priory of St. Andrews,	Regulars	3
„ Monastery of Arbroath,	„	3
„ „ Dunfermline,	„	2
„ „ Holyrood,	„	2
„ „ Kelso,	„	2

<sup>1</sup> In value about a fourth of 100 marks sterling—say £16, 12s. sterling.

From the Monastery of Coupar (in Angus),	.	.	Regulars	2
"	"	Cambuskenneth,	"	1
"	"	Lindores,	"	1
"	"	Balmerino,	"	1
"	"	Coldingham,	"	1
"	"	Pittenweem,	"	1
"	"	Abbey of Dryburgh,	"	1
"	"	Monastery or Nunnery of North Berwick,	Secular	1
"	"	Nunnery of Haddington,	"	1

## Of the diocese of Glasgow.

From the Monastery of Paisley,	.	.	Regulars	2
"	"	Melrose,	"	2
"	"	Kilwinning,	"	1
"	"	Crossraguel,	"	1
"	"	Jedburgh,	"	1
"	"	Holywood,	"	1
"	"	Sweet Heart,	"	1

## In the diocese of Whithorn.

For the Priory of Whithorn,	.	.	"	1
From the Monastery of Glenluce,	.	.	"	1
"	"	Dundrennan,	"	1
"	"	Tungland,	"	1

## In the diocese of Aberdeen.

For the Monastery of Deer,	.	.	"	1
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## In the diocese of Moray.

From the Monastery of Kinloss,	.	.	"	1
"	"	Pluscarden,	"	1

## In the diocese of Dunblane.

From the Monastery of Inchaffray,	.	.	"	1
"	"	Culross,	"	1
"	"	Inchmahome,	"	1

## In the diocese of Dunkeld.

For the Monastery of Inch-Colme,	.	.	"	[1]
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Of the rest of the dioceses there is nothing said.<sup>1</sup>

<sup>1</sup> It is noticeable that in the list of monastic houses, all but those of St. Andrews, North Berwick, Haddington, Whithorn (Candida Casa), seem to have been entered as *monasterium*, though—besides St. Andrews and Whithorn—Coldingham, Pittenweem, and Pluscarden were priories, not abbeys; North Berwick is in the text *monasterium sive prioratus*, Haddington *prioratus*. But

(199) Of the method and order of preaching.

The preachers now appointed, and the others [to be appointed] pursuant to the present holy convention, shall, after the publication of this statute, be obliged to observe this order in their preaching; to wit, that in all and sundry of their discourses or addresses they give the first half to an explanation of the Epistle or the Gospel, and allot the last half, as time and their hearers will permit, to catechism,<sup>1</sup> that is, to public teaching or instruction. Catechism is what we call a short instruction in the rudiments of the faith or in an exposition of the articles of the Creed, the precepts of the Decalogue, the seven deadly sins, the seven sacraments of the Church, the Lord's Prayer, and the Hail Mary, and the works of mercy. In all of which discourses let them be enjoined to stir up the Christian people to a befitting veneration of the sacrament of the altar, and to instruct the congregation in proportion to their capacity in the efficacy and right use of this sacrament.

(200) Order to be followed in the exposition of theology.

That on these subjects there may be pursued in the public schools<sup>2</sup> and academies the studies by means of which it may the rather be hoped to make provision for the profitable teaching of the liberal arts<sup>3</sup> and the instruction of Christ's faithful people, this holy synod enacts that lecturers on holy Scripture and theology in the several colleges so devote themselves to the Scriptures and to theology that some shall seek to expound the Scriptures as accurately as possible according to the sense of the Catholic Church; while others shall, at different hours, on

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in the corrigenda at p. cccxii of vol. i., Dr. Robertson corrects *prioratus* in both cases to *priorissatus*, nunnery. The *secularis* to be sent on behalf of the nunnery to the university was a secular canon or priest supported at its expense. As in the original the monasteries are in some cases indicated by Latin nouns, sometimes by Latin adjectives, and the vernacular spellings have in nearly a dozen cases been conjecturally restored, the names have been uniformly modernised.

<sup>1</sup> *Catechismum*. But *catechism* is here, as often in English at this date, a course of oral catechising or systematic instruction in the faith, a kind of simple preaching; not the printed manual ere long prepared to assist the clergy in this part of their duty (see Statute 253). In some cases the *Manipulus Curatorum* (see note 2, p. 266 below) may have provided such a compendium. Nor was it necessarily or usually in the form of question and answer.

<sup>2</sup> *Gymnasiis*.

<sup>3</sup> *Scientiarum*.

different days of every week, apply themselves to lecturing on theology from readings in the same Scriptures, interpreted according to the rule of the ancient doctors and the sense of the Catholic religion, that their students may in this way make progress in the said holy Scriptures and in speculative<sup>1</sup> theology: and the said synod orders every ordinary to have this said system adopted in his university, if he has one, or else within his city and at his cathedral church: and what it deems would be more useful and for the time more edifying is that with respect to speculative theology they give themselves rather to the reading of approved authors, such as are the works of the Master of Sentences,<sup>2</sup> the commentaries of St. Thomas Aquinas, of St. Bonaventura, and others.

(201) The order to be followed in the lectures on grammar and logic.

The same synod wills and decrees that the rector of every university, not forgetting or overlooking the reasons moving thereto, have a care to admit no students to the classes of logic or of the arts save such as speak Latin, and that grammatically; and that those who wish to acquire the art of dialectic be examined before they are admitted to that study; and that none be admitted to the degree of bachelor or master until after strict examination they have been found qualified to receive it: otherwise let them be put back to the next lower class; and if this is not done, it shall be imputed [as a fault] to the rector.

Item the archdeacon of St. Andrews shall take care concerning the master of the grammar school in the city of St. Andrews that he be versed in grammatical subjects, of good moral training, and amply competent in other respects to teach boys and such as do not know the simplest elements of grammar.

(202) Of the qualifications of those about to receive orders.

With respect to the qualifications in morals, learning, and

<sup>1</sup> Theoretical, dogmatic; as opposed to exegetical and practical.

<sup>2</sup> Peter Lombard was so called from his *Sententiarum Libri IV.*, for five hundred years one of the most widely used compendiums of controversial theology; substantially a collection of 'opinions' of Augustine and other fathers. Aquinas represented Dominican and Bonaventura Franciscan orthodoxy.



title<sup>1</sup> of those about to be ordained, it is statute that on these points the law of the sacred canons be strictly observed, and that at ordination the several ordinaries keep this same law in view, and make the ordinand read it or have it read to him; and that no clerks, however qualified they be in learning and morals, be admitted to holy orders for the space of three years next to come from the date of the presents, unless they are beneficed persons, monks, or have a canonical title to the value of twenty pounds in Scots money; and that ordinaries carefully examine their titles in these respects; also that there be no suspicion of unlawful bargaining, and that ordinands give assurance upon this. And that those ordained by oversea bishops, whencesoever they may have come, shall not minister at the altar, and shall by no means be allowed to do so, unless they are found qualified by previous examination made by a competent judge at the instance of the diocesans in whose see they have attached themselves to the altar or of their deputies appointed for the purpose; so that those found qualified in terms of the present statute shall be held worthy to be admitted, and that those found not thus qualified shall be suspended from the exercise of their orders until they render themselves capable and competent.

(203) That all curates be examined by their ordinaries.

With respect to curates of parish churches or ministers performing the pastoral duties, since very many of them throughout the whole realm of Scotland are discovered to be so very deficient,<sup>2</sup> as well in learning, morals, and discretion, as in other qualifications requisite for that office, the present convention has statute that, betwixt this and the last day of December next to come, all curates be cited by their local ordinaries to appear before the said ordinaries or their commissaries deputed or to be deputed thereto, and undergo a due examination in all the requirements of their office, with certification that if they do not compare they shall be removed from their cures and offices; and that if they be

<sup>1</sup> By the ancient law and practice of the Church, a secular cleric could not be admitted to holy orders unless he could show that he had been nominated to a benefice sufficient for his actual maintenance. £20 Scots at the time would be about £5 sterling.

<sup>2</sup> *Adeo insufficientes.*



found competent and compear, they shall be continued and reinstated anew; but if unqualified, they shall be rejected in terms of the provisions of the law, and be admonished beforehand to resign at the next meetings of their synods; and all vicars or—where vicars are not the immediate superiors—rectors of unqualified curates shall be instructed to officiate in their cures in person until they and each of them severally shall have provided a qualified curate, admitted by the local ordinary.

(204) Vicars-pensioners shall reside in their cures.

But vicars-pensioners shall, according to statute and custom, reside in their cures and places whence they derive their pensions, and officiate in person under pain of suspension and confiscation of all their fruits, stipends, and revenues, which the ordinary shall apply to the use of the poor. And the said vicars-pensioners shall in like manner be examined, as also their parishioners and neighbours or others who have evidence to give; and those found disqualified shall be at once reported to the ordinaries, to the end that in the provincial council or the general convention next to come provision of a suitable remedy may be made with respect to them.

(205) What kind of a person should be chosen to be curate.

Now the fitness of those who should be appointed to cures and benefices shall be investigated chiefly as regards this point, that those who seek to be admitted to such benefices and cures be willing and able to fulfil the duties with which they are entrusted, and discharge their functions faithfully according to the requirements of the benefice and cure.

(206) On whom benefices should be conferred.

And that they be men of lawful age, of staid character, proficient in learning, promoted to holy orders, and free from bodily blemish; but let those whose interest it is know that if, desiring such and such persons to be admitted to Church benefices and cures, they shall have sinned by guile, partiality, favouritism, or carelessness in this connection, they have brought down no less severe a punishment on them-

selves than on those worthless vicars and curates whom they have preferred to the said cures, which punishment awaits them at the strict tribunal of God; and further, let them know that they have also incurred canonical censures. And, furthermore, that these vicars and curates be held bound to devote themselves more closely and without hindrance to their duty, and their negligence may be more freely punished, it is ordained that every curate or vicar-pensioner exercising a cure of souls and residing therein have each year for his fee and stipend twenty merks Scots money or its equivalent, garden and [fields] adjoining the manse to be reckoned in the sources of income;<sup>1</sup> with this proviso, that in those sees or places wherein scarcity and dearth of victual prevail in consequence of the raids and invasions of enemies, the ordinaries of the places shall intimate in their synods the causes of this scarcity and dearth of victual, and in charity augment the stipends; and that it shall not be open to vicars-pensioners or curates [to do duty] by deputy, but [that they must] reside in person in their said cures; otherwise it shall be lawful for the vicar or rector to appoint by way of curate another in place of the non-resident curate by advice of the ordinary without further process, since non-resident pensioners fall to be removed by their ordinaries, pursuant to that decree of the Council of Trent which begins *Inferiora beneficia*.<sup>2</sup> Of which the tenor is in these words, as follows:—

‘Inferior ecclesiastical benefices, especially such as have the cure of souls, shall be conferred on persons worthy and capable, and who can reside on the spot and exercise personally the said cure, in accordance with the constitution of Alexander III. in the Council of the Lateran,<sup>3</sup> which begins *Quia nonnulli*; and that other of Gregory X., published in the General Council of Lyons,<sup>4</sup> which begins *Licet Canon*. A

<sup>1</sup> *Computandis proficuis horto et curae adjacentibus.*

<sup>2</sup> This is chap. iii. of the viiith session; the next four statutes correspond to chaps. iv., v., vi. and vii. combined, and chap. viii.

<sup>3</sup> The Third Lateran Council in 1179, canon xiii.

<sup>4</sup> The second council at Lyons (fourteenth ecumenical council) in 1274, canon xiii., which expressly refers to Alexander III.’s constitution, and begins *Licet canon a felicitis recordationis Alexandro Papa III. . . . editus inter cetera statuerit*. Gregory’s constitution was assumed into the Canon Law; and in our Statute 271 below is quoted from the *Sextus Decretalium*, i. vi. 14.

‘collation or provision made otherwise shall be wholly annulled; and let the ordinary who collates know that he will himself incur the penalties set down in the constitution of the General Council, which begins *Grave nimis*.’<sup>1</sup>

(207) That none have several incompatible benefices.

‘Whosoever shall for the future presume to accept or to retain at the same time several curacies or otherwise incompatible benefices, whether by way of union for life or in perpetual commendam, or under any other name or title whatsoever, contrary to the terms of the sacred canons, and especially of the constitution of Innocent III., beginning *De multa*,<sup>2</sup> shall be *ipso jure* deprived of the said benefices, according to the disposition of the said constitution and also by virtue of the present canon.’

(208) That ordinaries cause dispensations to be exhibited.

‘The ordinaries of the places shall compel all those who hold several curacies or otherwise incompatible ecclesiastical benefices to exhibit their dispensations for verification; and they shall otherwise proceed according to the constitution of Gregory x., published in the General Council of Lyons, which begins *Ordinariis*;’<sup>3</sup> and which this holy synod thinks ought to be renewed and doth renew; adding further, that the said ordinaries are by all means to provide, even by deputing fit vicars and by assigning a suitable portion of the fruits, that the cure of souls be not in any way neglected, and that the said benefices be nowise defrauded of the services due to them; no appeals, privileges, or exemptions whatsoever, even with a commission of special judges, and inhibitions from the same, being of avail to any one in the premisses.’

(209) Of conjunctions of benefices.

‘Unions in perpetuity made within forty years may be examined into by the ordinaries, acting as delegates of the

<sup>1</sup> This again is canon xxx. of the Fourth Lateran in 1215.

<sup>2</sup> This is xxix. of the Fourth Lateran in 1215.

<sup>3</sup> The xviiiith constitution is meant, but it begins, not *Ordinariis*, but *Ordinarii*: adopted into the Canon Law, it appears in the *Sextus Decretalium*, Book I. Title xvi. (*De officio Ordinarii*), and chapter 3, which is referred to in our Statute 271 below.

‘ Apostolic See ; and such as shall have been obtained by surreption or obreption<sup>1</sup> shall be declared null. Now those are to be presumed to have been surreptitiously obtained which, having been granted within the aforementioned period, have not as yet been carried into effect wholly or in part, as also those which shall henceforth be made at the instance of any person soever, unless it shall be ascertained that they have been made for lawful or otherwise reasonable causes, which are to be verified before the ordinary of the place, those persons being summoned whose interests are concerned : and therefore such conjunctions shall be altogether of no force unless the Apostolic See shall have declared otherwise.

‘ Ecclesiastical benefices with cure of souls which are found to have been always united and annexed to cathedral, collegiate, or other churches, or to monasteries, benefices, colleges, or other pious places of what sort soever, shall be visited every year by the ordinaries of those places ; who shall apply themselves sedulously to provide that the cure of souls be in praiseworthy manner exercised by competent vicars—even perpetual vicars, unless the said ordinaries shall deem it expedient for the good of the churches that it be otherwise—to be deputed thereunto with the portion of a third part of the fruits, or of a greater or less proportion, at the discretion of the said ordinaries, which [portion] is to be assigned even upon a specific property ; no appeals, privileges, exemptions, even with a commission of judges and inhibitions from the same, to be of any avail in the premisses.’

(210) Ordinaries shall visit exempted places.

‘ The ordinaries of the places shall be bound to visit every year with apostolic authority all churches whatsoever in whatsoever manner exempted ; and to provide by suitable legal remedies that such churches as need repairs be repaired ; and be in nowise defrauded of the cure of souls, if such be annexed thereunto, or of other services due to them : appeals, privileges, customs, even those that have a prescription from time immemorial, commissions of judges, and inhibitions from them, being entirely inadmissible.’

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<sup>1</sup> By misrepresentation or intrigue.

(211) Concerning parish clerics.<sup>1</sup>

The synod enacts that parish clerics officiate personally in their offices or present at every synod a competent substitute to serve in that office, who shall be admitted by the ordinary; a reputable person who shall be able suitably to fill the place of his principal in such office; if on the other hand this has not been attended to, he shall be fined in the third part of the emoluments of his clerkship for his first offence and in two-thirds for the second, both fines to be applied for the use of the poor, and thereafter he shall be punished with a penalty at the discretion of the ordinary.

## (212) Of testaments; and that executors shall render count and reckoning.

This convention enacts that all testaments and inventories of goods of deceased persons shall be validly registered to secure their execution by the executors nominate and the preservation of the property intromitted with, by whom count and reckoning of their faithful administration of all the goods and properties shall yearly be rendered through the officials and the commissaries of the ordinaries; and this they shall accordingly be admonished to do, as well in confirmation of wills as in auditing of accounts, so that provision be made for the security of issue, pupils, legatees, and others who have interest therein, by a reckoning which shall be sufficient and in other respects as law requires; and that deans or commissaries do not confirm any testaments until they have first received from the executors oaths *de fidelitate* and as to the accuracy of their inventories, and as to the value placed on the goods.

## (213) Concerning the taking over and administration of testaments of the people of the diocese of Orkney, according to the customary and lawful method and

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<sup>1</sup> Parochial clerics, *clerici parochiales* or *parochiani*, were not of course 'parish clerks' in the modern English sense (though etymologically as well as historically the parish clerk represents the *clericus parochialis*), but were ordained clergy (at first in minor orders) introduced gradually into parishes when the feeling became universal against parish presbyters offering the Eucharist without the assistance of at least one other cleric. As to the office in Scotland before the Reformation, and its very multifarious duties, see Dr. Robertson's Notes to the *Statuta*, vol. i. pp. cccxiii, cccxiv; and vol. ii. p. 292.



practice of the rest of the dioceses in the province of Scotland.<sup>1</sup>

Having first retained all that by law and custom should be retained, and after long and equitable examination and consideration of the matters hereinunder written had been held, debated, and discussed, the present general convention of the province of Scotland or provincial council, being lawfully assembled, has enacted, decreed, and ordained for all time to come and for perpetual memory hereof, that in making wills, and inventories of goods as well in respect of estate bequeathed as of estate not bequeathed by will and of persons dying intestate, all and sundry the subjects of the see of Orkney, through all and sundry, whole and entire the islands of Orkney and Shetland, and other parts anywhere throughout the diocese and its spiritual jurisdiction, subject to the Church of Orkney, shall underlie the same law and custom as do other people in all the other provinces and dioceses of Scotland; and that the executors nominate of deceased persons in the see of Orkney, whether bequeathing or not bequeathing estate or dying intestate, shall take care that the intromitters with the estate make true inventories, and have them exhibited to and confirmed by the ordinary or his commissaries; and be held bound and obliged to pay to the ordinary the customary dues. But if they have not done so, or if any one of them have not done so, it shall be lawful for the said ordinary and his commissaries, after following the forms of process usual in like cases, to give and appoint for all purposes, at his own discretion, executors dative for the said estates whether bequeathed or not bequeathed, in conformity with the practice aforesaid, which has been followed and is to be followed in those cases.

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<sup>1</sup> The Scandinavian islands of Orkney and Shetland were pledged by Christian I. of Denmark to the Scottish Crown in 1468, as security for payment of the dowry of the Danish Princess Margaret, on her betrothal to James III.; the pledge was never redeemed, and the laws and customs of the islands were in many respects conformed—sometimes by very high-handed methods—to those of Scotland. The diocese of Orkney (including Shetland), long claimed as a suffragan see by the Archbishops of York, was from 1102 actually dependent on Trondhjem, till in 1472 it was formally attached to St. Andrews by Pope Sixtus IV., four years after the islands had been mortgaged to Scotland.

## (214) Of the examination of notaries.

Furthermore, it is ordained that notaries within every diocese be summoned by their respective ordinaries to undergo a new examination in compliance with the customary law and the requirement of the estates of the realm; and they, it is resolved, shall be summoned for those days for which the curates of their churches are to be summoned, betwixt this and the first synod of their respective dioceses, to the end that they may be examined; and that meanwhile inquiry be made among their neighbours by commissaries hereto deputed, concerning their character, good name, loyalty, faithful administration of their scrivenership and of this office [of notary], before they come up for examination; when, if after examination held they are found fit, they shall be admitted, and receive at once their letters of admission; but those that are unfit shall be suspended from the execution of their office, so that their instruments shall in future be held to be null and of no avail in court and out of court; also that notaries who are admitted stamp or subscribe their signs,<sup>1</sup> which they have been accustomed to use in legal instruments and will continue to use, in the books of the officials of those sees or of their commissaries before and by whom they shall be examined; the contumacious who have been forewarned by citation shall be suspended from office until they compare, and those that have been admitted, as well as those that have not been admitted, shall have their names published in their synods aforesaid.

## (215) Of the protocols of notaries deceased.

This synod has enacted and decreed that the protocols and books or minutes of notaries deceased be immediately delivered up as soon as they have died to the official of that diocese wherein they die; and if by such deceased notaries their books of protocols shall have been bequeathed to any persons in their

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<sup>1</sup> The signs here and in Statute 167 were the devices which notaries selected or invented, and stamped or marked with a pen on documents authenticated by them. Signs-manual or subscriptions-manual (Statutes 255, 257) were autograph signatures. Acts of Parliament in 1540, 1555, and 1563 also dealt with the registration of notaries' signs and the safe keeping of their *protocollis*. Notaries-public still have to register their mottoes, and may not alter motto or subscription without judicial authority.

wills, an estimate shall be made and a settlement come to between these legatees and the clerks of the officials concerning the benefits and advantages conveyed by the instruments which may be extracted from the protocols; and the carrying out of these transactions shall be seen to by every official within his officialty and jurisdiction; and the folios of the protocols shall be numbered and marked when they are received by the said officials.

(216) Of plurality of benefices.<sup>1</sup>

With respect to plurality of benefices, the convention or council avails itself of the ordinances that have been or shall be made by the Council of Trent, which has not yet been dissolved. One of its decrees<sup>2</sup> thus begins:—

‘No one, by whatsoever dignity, rank, or pre-eminence he may be distinguished, shall presume, in contravention of the institutes of the sacred canons, to accept and to hold at the same time several metropolitan or cathedral churches, whether by title or in commendam, or under any other name whatsoever, seeing that he is to be accounted exceedingly fortunate to whom the lot has fallen to rule one church well and fruitfully, and to the salvation of the souls committed to him. But as to those who now hold several churches contrary to the tenor of the present decree, they shall be bound, retaining the one which they may prefer, to resign the rest within six months, if they are at the free disposal of the Apostolic See, in other cases within the year; otherwise those churches, the one last obtained only excepted, shall be from that moment deemed vacant.’

The case of inferior benefices has been dealt with above [in Statute 206].

<sup>1</sup> In the printed text this Statute is also numbered 215; and those I have ventured to number 217 and 218 are in the Latin 216 and 217. But the Statute numbered in the translation 219 has—apparently by oversight—been divided into two by attaching a new numeral at the beginning of a list of names. From 220 accordingly the reckonings agree again; though for 221 has been accidentally printed 211 in the Latin text.

<sup>2</sup> This is chapter ii. of the viiith session (3rd March 1547), immediately preceding chapter iii., incorporated in our Statute 206. The twenty-fifth and last session did not take place till December 1563.

## (217) Of the foundations of hospitals and monasteries.

Anent the condition and repair of hospitals, it is enacted that every ordinary make diligent inquiry throughout his diocese regarding the foundations of hospitals wheresoever situate within its limits, and if the charters and instruments of the said foundations can be found, he shall carefully consider what rents and rights did or should belong to these same hospitals, for whom and for what kind of persons they were founded, to what extent these same pious places are dilapidated by the appropriation of their funds to other than their original uses, who are their present possessors, and by what title they hold possession; and the same investigation must be made within each diocese regarding chaplainries and other foundations and services wherewith churches have been perpetually endowed, both for the worship of God and the souls' weal and relief of the deceased donors; and whatever [irregularity] of the kind referred to be definitely ascertained, he shall report it in the next general convention or provincial council of prelates with a view to its correction. Wherefore this convention exhorts all and sundry abbots, priors, commendators, administrators, prioresses of nuns, also provosts and deans of collegiate churches, who are bound hereto, to see that the alms which they were wont to distribute to poor mendicants be again paid as of old and the payments maintained, and to repair and restore their churches which may be ruinous and dilapidated, as well in walls as in roof: and every ordinary in his ensuing visitation shall hold a searching inquiry and investigation into these matters. Also it enjoins and ordains that the distribution of such alms be entrusted to faithful, prudent, and honourable men, who shall have the care of the poor in these districts; and that the masters of the fabric<sup>1</sup> and directors of works of every monastery be sent, as should be done every year in every parish, to visit ecclesiastical places attached to the said monasteries and churches for the repair of dilapidations.

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<sup>1</sup> *Magistri fabricae*. Master of the work, or of works, was a term from the beginning appropriated to the official in charge of buildings and building operations. At St. Andrews there was a special 'Master of the Kyrk werk' or 'Kyrkmaster' responsible for the fabric of the parish church as early at least as 1503; in 1598 the office was still filled by a 'Kirkmaister.'

- (218) Benefices in the gift of lay patrons shall not be conferred, unless notice has been given by previous proclamation.

Item for the eschewing of all grounds of quarrel in matters relating to benefices, and that steps be not meanwhile taken in ignorance to collate the benefices which appertain to the patronage of others than themselves, the council enacts that no provisions of any benefice whatever [be granted] by the ordinaries of places in any but the clearest cases, unless formal notice, as well of vacancies in the benefices as of the right of patronage claimed by the patrons who present to them, has been previously given publicly and specifically in conformity with the chapter . . . *Of Election*, Book the Sixth;<sup>1</sup> excepting those benefices which the said ordinaries have a perfect legal right to bestow and collate to, and those on the patronage of which there is clear and distinct evidence to what person or persons the rights of patronage belong or are granted. Also that the registers of all collations remain in the keeping of the several ordinaries, and of each of them.

- (219) For the maintenance and the permanent establishment of preachers of the word of God wherein the Christian people are to be nurtured, etc.

For the permanent establishment of preachers throughout the province and their maintenance, that the said preachers may not want for food and other necessities, the archbishop primate,<sup>2</sup> the bishops ordinary, and the inferior clergy, representing in the present provincial council the general convention of bishops and clergy of the realm of Scotland, have, on behalf of themselves and others, respectively assigned to the preachers who shall undertake the preaching, in respect of

<sup>1</sup> 'Book the Sixth,' the *Sext*, is the *Sextus Decretalium* added to the *Corpus Juris Canonici* in 1298, by Boniface VIII. Though in relation to the rest of the Canon Law it is the 'Liber Sextus,' it is, when treated as a substantive work, subdivided into five other subordinate *libri*; of which the first, in its sixth title, treats in forty-seven chapters *De Electione et Electi Potestate*. But, like the draftsman of our statute, I have failed to make sure which of the forty-seven gives the prescription here referred to; which seems rather to belong to the title *De Jure Patronatus* (*Decret. Greg. IX.*, lib. III. tit. xxxviii.).

<sup>2</sup> The see of Glasgow was at this time vacant.



each of the prelates within the district and among the people subject to his jurisdiction, the following benefices; and provision shall be made that the present possessors do not resign them [to others] to the detriment of the preachers, as is contained in the instruments drawn up thereanent.

#### NAMES OF BENEFICES ALLOTTED TO PREACHERS

For the Archbishop of St. Andrews, the rectory or church of Muckart.

„ „ „ Glasgow, the vicarage of Glasgow, or Glasgow secundo.

For the Bishop of Aberdeen, the precentorship or prebend of Cruden.

„ „ Moray, the rectory of Inverkeithing.

„ „ Whithorn, the rectory of Christ's Kirk.

„ „ Dunblane, the prebend of Kippen.

„ „ Dunkeld, the archdeaconry of Dunkeld.

„ „ Lismore, the archdeaconry of Lismore.

„ „ Orkney, the provostship of Kirkwall or Orkney.

„ „ Brechin, the subdeaconry of Brechin.

„ „ Ross, the archdeaconry of Ross.

„ „ Caithness, the archdeaconry of Caithness.

For the Priory of St. Andrews, the vicarage of Trinity Church at St. Andrews.

For the Monastery of Arbroath, the vicarage of Kirriemuir.

„ „ Paisley, „ „ Kilmalcolm.

„ „ Kilwinning, „ „ Dunlop.

„ „ Dunfermline, „ „ Musselburgh.

„ „ Kelso, „ „ Linton.

„ „ Holyrood, „ „ Falkirk.

„ „ Dryburgh, „ „ Kilrenny.

„ „ Lindores, „ „ Dundee.

„ „ Scone, the church of Kildonan in the diocese of Caithness.

„ „ Cambuskenneth, . . . . .

„ „ Inchmahome, the vicarage of Lintrathen.

„ „ Melrose, „ „ Hassendean.

For the Priory of Coldingham, „ „ Ednam.

„ „ Whithorn, „ „ Glasserton.

For the Monastery of Kinloss,	.	.	.	.	.	.
"	"	Inch Colme,	the vicarage of	Leslie.		
"	"	Jedburgh,	"	"	Dunmany. <sup>1</sup>	
"	"	Deer,	"	"	Petterwgy. <sup>2</sup>	
"	"	Balmerino,	the rectory of	Logymurthe. <sup>3</sup>		
"	"	Coupar	.	.	.	.
"	"	Glenluce,	.	.	.	.
"	"	Nunnery of North Berwick,	the vicarage of	Largo.		

Prelates of monasteries who have not benefices at their disposal shall give pensions sufficient for the maintenance of the preachers.

Item it seemed good to the present council, after considering the position of affairs and the state of the times, that both at the beginning or exordium and at the end of discourses the ancient and accepted form of invocation be observed, namely, of saying an 'Our Father' for obtaining grace and the Angelical Salutation to the Most Blessed Virgin, that she may intercede with the Lord God to procure divine grace for making the discourse blessed and fruitful; and that at the close of the sermon a prayer be said for the souls of the departed, after the received practice of the church.

(220) For the extirpation of heresies.

Item for the extirpation of heresies, it is enacted in the present council that the several local ordinaries of places appoint, as inquisitors of heretical error in their respective dioceses, men of piety, integrity, and learning, and versed in theology, who must also be men of good life and good name,

<sup>1</sup> The *New Statistical Account* erroneously suggests the identity of *Dunmany* with a nameless ruin in the parish of Skirling; the *Origines Parochiales* (s.v. 'Skirling') refer *Dunmanyne* to the deanery of Linlithgow; and a Scots Act of Parliament in 1597, dealing with Dalmeny kirk, regularly spells it *Dummany*. This tallies: for Dalmeny was one of the churches that belonged to the abbey of Jedburgh. See also Wodrow's *Biographical Collections*, vol. ii. part II. p. 2.

<sup>2</sup> Petterwgy or Peterugie was at this date the name for the parish of Peterhead; from the Ugie water, which bounds the parish and falls into the sea near Invergie. The church of Peterhead belonged to the abbey of Old Deer.

<sup>3</sup> Logiemurthe or Logie Murdoch is the old name of the Fife parish now known simply as Logie. As the place-names are again, as in Statute 198, partly Latinised and mostly old vernacular, all but the three to which notes are appended have been modernised.

and of great tact; who shall with the utmost diligence make inquisition anent heresies, and for the repression of errors and foreign opinions concerning the sacraments of the Church, and other [innovations]; and who shall be bound to make search for condemned books written by heretics, and by persons ill-affected towards the faith; and these, when they have been found, shall be brought to the local ordinaries. And furthermore, the several abbots, priors, commendators, administrators, provincials, ministers and guardians, shall do likewise with their subjects and the religious in their abbeys, convents, and cloisters, and ransack the cells of their monks, that whatever books written by heretics or others ill-affected towards the faith be found there may also be brought to the ordinaries.

(221) Useful and necessary regulations for the repression of heresies.

In the first place, it is statute that local ordinaries shall every year make the most diligent and precise inquisition, so far as it can be done in keeping with circumstances and local interests: general inquisitions four times a year, but special ones as often as the occasion shall arise; that they shall prosecute these inquisitions with the greatest thoroughness possible, according to the form and directions of the sacred canons and prescripts; that in pursuance of the chapter *Ut officium*, the chapter *Abjurans*, the chapter *Ut commissi*, the chapter *Statuta*—all contained under the title *Of Heretics*, Book the Sixth<sup>1</sup>—and other canonical statutes, and customs of the realm hitherto observed, they shall proceed with the utmost rigour of the law against heresiarchs, and sacramentarians,<sup>2</sup> and

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<sup>1</sup> Again, the reference is to the *Sext*, the *Sextus Decretalium*. *Ut officium* is chapter xi., *Ut commissi* chapter xii., *Statuta* chapter xx. of Title ii. of Book v. of the five subordinate books into which the *Sextus* is subdivided. There is no chapter there or thereabout actually beginning *Abjurans*; the reference (from memory, probably) was no doubt to chapter viii., which begins *Accusatus*. . . *qui haeresim abjuraverit*. See also Statute 271.

<sup>2</sup> In the sixteenth century the name of sacramentarians or sacramentaries (see Dr. Robertson's notes in vol. ii. p. 294) was given, not, as often now, to those holding a higher doctrine of the Sacrament of the Lord's Supper, but to Zwinglians and Calvinists.

chiefly against those who inveigh against the sacrament of the Eucharist; and that inhibitory letters shall be issued by the ordinaries with the penalty of excommunication *ipso facto* incurred, as well against those who preach without admission from the ordinary, as against the parishioners themselves or others who shall listen to the said preachers of this stamp, forbidding them to give audience, attendance, or countenance to the same; and in connection herewith, letters of the queen, conformable to their own inhibiting letters, shall be procured by the ordinaries and put in execution.

(222) Of amendment of life and morals.

Item in the second place, the present convention beseeches in the bowels of Jesus Christ,<sup>1</sup> and for the stirring-up of piety exhorts the ordinaries, all of them and each of them, as well as the rest of the prelates and the incumbents of benefices in the realm, to reform their life and morals to better purpose, in accordance with the statutes and regulations of the present council, that by this means all occasions of heresy in this realm may be more easily obviated, and the said ordinaries be able with greater freedom and expedition to take measures for their repression; lest the very persons rashly proceed to the rigorous correction of the morals of others, who are themselves implicated in notorious offences,<sup>2</sup> since from this cause arises the greatest scandal to the laity, and the largest proportion of the heresy.

(223) Of the preaching of God's word.

In the third place, every ordinary shall have a care that throughout his diocese rectors of parishes and other ecclesiastical persons shall strive with all their might that the word of God be expounded to their flocks purely, sincerely, and in a Catholic sense; that the true uses of the church's ceremonies be moderately, soberly, and discreetly explained; that false

<sup>1</sup> It is well to be reminded that this Scriptural phrase (Phil. i. 8), often regarded as a note of Puritanism, was familiar to the Scottish pre-Reformation fathers, and occurs not once, but repeatedly, in these statutes (compare Statutes 259 and 268).

<sup>2</sup> *Criminibus*.

opinions be prohibited, publicly denounced, and confuted. In order that provision be made for the more frequent preaching of God's word in churches, abbeys, colleges, universities, and other pious places which have been united and incorporated into collegiate bodies, it is enacted that abbots, priors, commendators, administrators, and provosts of such places, pay to religious and others who shall be admitted by ordinaries to spread abroad the word of the Gospel, larger salaries than they have been wont to pay; that the said preachers be received with kindly hospitality in every parish they come to; and, with a view to this, that the said religious be paid by the several parish churches, from which they receive no annual allowances of victual, the total sum of forty shillings a year for their labours and expenses, for the four times a year that they shall preach in supplying the place of the rector. For the recovery of which sum the officials or commissaries of the several dioceses, at the request of the said religious and on production of warranty against the rectors of their respective districts, shall issue private monitory letters, and by other suitable legal measures, if necessary, compel the said rectors to make payment of the said sums; it being provided, however, that the said religious shall be content with the allowance of victual which they are wont to receive by the year for their preaching from abbeys, priories, and other collegiate places.

(224) And how often in the year preaching has been done in place of the rector is to be noted by the curates, etc.

Item the several curates shall record in their books how often the said religious preach in place of rectors or vicars in their respective churches, and intimate the same to their local ordinaries in their synods; and, moreover, the curates or resident vicars shall ascertain from the said preachers the feast day fixed for the next preaching, that intimation may be given in due time to the parishioners, so that they may be able to attend the sermons in larger numbers; and the curates who neglect to do this shall be punished by their ordinaries; and the deans in their visitations shall diligently inquire regarding all the particulars comprised in the present statute.



(225) Articles upon which the inquisitors of heretical pravity ought especially to found their inquiries, etc.

It was thought expedient that several articles upon which the inquisitors of heretical pravity ought most chiefly to found their inquiries should be specially indicated, and that preachers in their sermons, when opportunities for doing so offered, should discreetly and prudently, according to the exigencies of the occasion and of their hearers among whom such and such errors have been discovered, inform and instruct the people against the said errors, in accordance with the teaching of the Catholic Church. Let them, however, in those districts in which they have not ascertained that there are any heresies amongst their hearers, beware of making mention of heresies unknown to them.

The said articles are as follows :

In the first place, against those who rail against the sacraments themselves or against the ceremonies, rites, and observances received by the church and used in the administration of the sacraments, and especially in the sacrifice of the mass, in baptism, confirmation, extreme unction, penance, and the other sacraments.

Against those who disparage the censures of the church.

Against those who deny that there are any souls of saints now reigning with Christ, even to the judgment day, and destined to reign for ever thereafter, the soul being united to the glorified body.

Against those who deny the immortality of the soul.

Against those who deny that there is any reward bestowed on works done in faith and charity.

Against those who deny a purgatory after this life.

Against those who deny [the efficacy of] the prayers and intercessions of saints.

Against those who deny that images are lawful in Christian churches.

Against those who deny that a General Council has any authority in defining dogmas and who reject its canonical decisions.

In general, against those who impugn whatever has been or shall be determined by a General or Provincial Council.

Against those who disparage the fasts and feasts appointed by the church.

Item every ordinary shall diligently inquire within his own diocese what persons have in their keeping any books of rhymes or popular songs<sup>1</sup> containing calumnies and slanders defamatory of churchmen and church institutions, or infamous libels, or any kind of heresy; and when such have been discovered, they shall be prohibited under the penalties inflicted by Acts of Parliament and confiscated and burnt; and the use, sale, printing, and reading of the same shall be universally interdicted under the like penalties.

(226) Concerning the Lord's Prayer, 'Our Father,' etc.

The council enacted, for reasons appealing to it, that this [statement] in the vulgar tongue which follows should be here inserted: [The statement referred to had not, however, been transcribed, a blank being left in the text.]<sup>2</sup>

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<sup>1</sup> The council had by this time open to their animadversion a considerable mass of popular rhymes and poems dealing more or less satirically, irritatingly, and irreverently with the shortcomings of the Church and the frailties of churchmen—largely the very faults against which the council was itself taking action. Sir David Lyndsay's *Dreme*, dating from about 1528; the *Thrie Estaitis*, from 1540; and *Kittie's Confessioun*, from about 1541. The Earl of Glencairn's pungent satire on the Grey Friars and Loretto seems to have been published about the latter date. And not to do more than mention *Symmie and his Bruther*, the *Three Priests of Peblis*, and the like, the *Gude and Godlie Ballatis* were in their rudimentary form apparently known as early as 1546; 'The Paip,' included in later editions, being, in its reprobation of the ways of priests, monks, and nuns, scurrilous as well as pungent.

<sup>2</sup> Foxe alleged that the question whether the *Pater Noster* might be said to the Saints as well as to God had been discussed in the pulpits and schools of St. Andrews, and even in one of the councils of the Church; and that finally it was referred to the sub-prior of St. Andrews (Wynram) to expiscate the subject. Dr. Mitchell in his 'Historical Notice' prefixed to a reprint of *Hamilton's Catechism and the Two-Penny Faith* in 1882 (pp. xxiii-xxiv) does not commit himself to a story that had been 'deemed incredible.' But some diversity of opinion there evidently was: and Dr. Mitchell inclines to the view that therein lay the reason of the lacuna at Statute 226. And, accepting the tradition that Wynram was (in great part, at least) the author of Hamilton's Catechism, he suggests that the outcome of the commission laid on Wynram by the Council may be found in the chapters of the Catechism which deal with the *Pater Noster*, supplying the authoritative instruction which might otherwise have been engrossed, more or less fully, in the above Statute.

(227) Of the 'Our Father' and 'Hail Mary' before sermons.

At the beginning of all public sermons the ancient and received form of invocation by saying the Lord's Prayer and the Angelical Salutation to the Virgin Mother of God to obtain grace shall be observed; and at the end of the said sermons prayer shall be made for the souls of the departed in the customary form received by the church.

(228) Here follow several regulations as to the office of procurators in consistorial courts and their practice in conducting cases.

In the first place, this convention forbids any procurators rashly to undertake the prosecution or defence of causes in an ecclesiastical court without full and complete information as to the facts, if not at the first, at least at the second stage; and if they refuse to give assurance of the truth of the informations, they shall be refused the right of acting as procurator. But when information to this effect has been secured, they shall collectively and severally examine with discretion the merits of the case, and on what legal ground the action or the defence, as the case may be, is based. But, if they are unable to take this upon themselves, they shall inquire of those who are more learned what is the law of the case; and if they ascertain that the information is consonant neither with canon nor civil nor municipal and customary law or style, they shall decline to go on with the cause, how great soever a fee may be offered; and they shall do the same whenever in the conducting of a case the evidence of its injustice shall become apparent.

(229) Of maintainers of unjust actions<sup>1</sup> and infamous persons.

In the second place, against manifest maintainers of unjust actions,<sup>1</sup> who take no thought whether a cause is just or unjust,

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<sup>1</sup> *De calumniatoribus*. The oath *de calumnia* or oath of calumny—i.e. that the action is not being carried on in collusion with the defender—is still exacted from the prosecutor in consistorial cases. Compare the English law of Maintenance and Champarty with the principle of the *pactum de quota litis* taken over from Roman into Scots law.

provided only there is hope of gain arising out of it, it is enacted that any such person convicted of having wittingly undertaken or of wittingly supporting an unjust cause, or who, to deter persons from just actions or defences, presumes to offer to delay actions or lawsuits for periods of one year, two years, or for any length of time, with intent to pervert justice, shall thereafter be reckoned as perjurers and infamous persons, and removed from their office of procurator, and, moreover, shall be punished at discretion by the local ordinaries; and the same judgment must be passed upon those who bargain with either litigant for a proportion of the award, or promise their services to those who enter into such bargains with them.

(230) He who interposes obstructive arguments is punished.

Item that causes may be conducted in better faith, it is statute that if any one shall have brought forward obstructive arguments or exceptions, and brings them up again and protracts them after they have been disallowed, or, if allowed, have not been proven, in addition to the damages to be paid by the party to the suit, by award of the judge, he shall pay two shillings for the first offence; which sum shall be doubled for the second offence in the same cause, trebled for the third offence, and so forth thereafter shall the fine be increased; and further, he shall be reckoned suspect of perverting justice, and underlie the penalties of the preceding statute. If for the third time in the same cause he shall have been guilty hereof, and shall have produced irrelevant [arguments] inadmissible for any other legitimate reason, he shall swear, before he be allowed to readjust the same to the style of the court, that he has used his utmost diligence to make his arguments pertinent to the present stage, and has not deliberately submitted invalid propositions in order to protract the term [allowed by the court for proof of averments].

(231) Of suborning.

Item it is statute that if any one shall use persuasions to induce the parties or the witnesses to swear falsely, or cause them to get out of the way by stealth in order to

create delay, or procure the tampering with instruments or their alteration from the protocols, he shall underlie the penalties of the statute of maintainers of unjust actions.

(232) That long delays and false excuses shall not be pressed.

Item no one shall insist on longer delays than the necessity of the case demands, plead false excuses for his own remissness or trickery with intent to prolong the suit, or suppress documents once produced in court, hinder the execution of decreets through the disappearance of the same, or let law-suits sleep through counsel on either side acting in collusion with each other.

(233) Of the order to be observed by advocates in court.

Item it is statute that in court or in debate of causes all things be said and done dispassionately and without disorder, and that each [*i.e.* of the advocates] shall sit in his own place until his case has been called in its turn by the clerk; and then let him address himself briefly to the crave before the court;<sup>1</sup> and so in turn shall the procurator of the other party act; and every one shall abstain, as far as possible, from the use of the vulgar tongue; and the rest shall listen in silence who are not concerned in that cause.

(234) Advocates<sup>2</sup> shall pay honour to the judge.

Item it is statute that clerks of court show themselves in all things prompt and ready implicitly to follow and obey the orders of the judges, and pay to them the homage, reverence, and respect which are their due, and confine themselves within the limits of their office, to wit, without the advice of the judge, [set down] nothing beyond matters which are public, and [minute] no deponent's statements until they shall have first been considered by the judge, whether they are trivial or otherwise, or simoniacal, or usurious, or imply any other unlawful agreements; and from procurators or their clients

<sup>1</sup> *Desiderio termini respondere*: reply to the demand to have a day fixed by the judge for proof of the case. Cf. *terminus* in Statutes 228, 230, 236.

<sup>2</sup> The heading has *advocati*, but the Statute deals with *scribae curiarum*.



they shall not, under pretext of any custom or corrupt usage which has hitherto obtained, exact any sum exceeding the old tax, of which old tax the tenor is given below.

[The tax is omitted in the text.]

(235) That the procedure before a judge be carefully noted by the clerk.

Item for the preservation of documents and the steps of the processes, it is statute that registers be kept for the recording of all the steps of process in all actions and for the registration of all documents produced in court, lest any part of the proceedings be lost, and lest documents be substituted other than those which were at first produced before the judges.<sup>1</sup> But the originals shall remain beside the register, and a receipt having been taken, the day on which they were received and the name of the receiver shall be set down in a book, and the originals shall be restored as soon as possible to the clerk; and if the clerks shall be found culpable in the premisses, those who have authority shall provide others in their place.

(236) Anent the reformation of processes before the consistorial courts.

In the first place, for the shortening of processes, it is statute and ordained, that in all causes the value whereof does not exceed the sum of twenty pounds, the course of proceeding shall in future be as follows: When a party has been cited, but has not appeared, by way of penalty for his contumacy, let a petition be presented stating what is claimed, let a statement of the grounds of the claim be reduced to articles, and let terms forthwith be appointed to go over the articles and take proof, and let the party be cited to answer the petitions and articles, and also to see witnesses, and other kinds of proofs received, sworn, and admitted: if they appear then, as a penalty for the contumacy of the party still declining<sup>2</sup> to obey the citation, let them be admitted to the effect foresaid and be examined, and let an act of court be recorded, and a term assigned to plead against the evidents produced, and to bring forward all legal

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<sup>1</sup> *I.e.* in the case of their being borrowed.

<sup>2</sup> Read *volentis* for *volentes*.

pleas, the party being cited for this purpose, at which term another term shall be assigned for pronouncing judgment against the party if he is still contumacious.

But if the party who was contumacious shall compear in the first term, let the petition be at once modified accordingly for insertion in the acts. If he is unwilling to answer at once, but has taken corporal oath that he is unable to answer on the spot, three days shall be given him to answer, or other short period at the discretion of the judge; at the end of which term, if he be in any way contumacious about giving an answer, process shall be taken as above. But if he appear, and put forward dilatory pleas, let them be similarly discussed; all ground for reservation being excluded, and after issue joined, let one term be appointed for taking proof; and if, after proof has been led, the defender petition for articles directly contrary [to those set forth in the condescendence] after he has first solemnly sworn that they are necessary to the defence of his cause, a short term shall be allotted to him to prove his own articles, along with his objections to the persons of the witnesses, his peremptory exceptions, and all the rights which he claims to exercise in carrying on his cause; and when all these arguments have been discussed on both sides, and the proofs led thereupon, a term shall be assigned to give decret in the principal cause as briefly as possible according to the form of the statute made of old hereupon, but herein saving in all respects the laws . . ., defences of parties, replies, duplies, deemed necessary in the opinion of a good judge, yet without calumny.

And in the same manner as above shall process be taken in all summary actions; and briefly and as summarily shall process be taken in causes under ten pounds as in causes under twenty pounds, saving the usual exceptions and those hereinafter mentioned.

In plenary causes, on the other hand, the form of process that has been heretofore in use shall be adhered to, but the terms shall, at the discretion of the judge, be shortened and abridged, all that is essential for the judgment being retained.

But in causes in which appeals are made it is statute that, if an interlocutor has been appealed from, the cause be in no

wise referred [to another court] unless the reasons alleged in the appeal shall be found relevant according to the prescriptions of the law. But, once appeal has been taken from an interlocutory or definitive sentence, no absolutions shall be given before the cases are referred. Furthermore, if decret has been given, [then] by the judge to whom [a matter] well adjudged has been wrongly appealed from the interlocutor, let the cause be remitted to the [original] judge, from whom let it not be retained;<sup>1</sup> and special care must be taken that citations and inhibitions be not given in appeals unless letters of appeal have been produced.<sup>2</sup>

Item within the archdeaconry of Lothian the examination of witnesses shall not be entrusted to any notary in the primate's court, unless the official of Lothian himself or his commissioners have first been called on by petition so to do.

Item if any one summoned to answer to the allegations and charges made compear, but refuse to swear or answer when requested by the judge, the convention has decerned—and this it recognises to be consonant also with the order of civil law—that he be held as admitting the allegations contained in the articles, lest, through his malice in refusing, justice to the other party should be retarded.

Item, let procurators and other members of the courts beware of annoying the judge by their vociferations in court, and of traducing him either publicly or privately to the other litigants by slanders and reproaches; but if they feel themselves injured in any way, let them modestly protest for remeid of law.

Item it is statute, that no one intrude himself into the office of procurator unless he has been enrolled on the list, and all these shall be sworn to observe the premisses, and to show respect in every way to the judge, as well in as out of court; and whoever shall be found culpable in the

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<sup>1</sup> It has been found necessary to alter the punctuation in this clause, and to read *est* for *et* and *judici* for *judicii*.

<sup>2</sup> *Nisi visis apostolis*; letters of appeal came by later usage to be called *apostoli*—a word earlier employed only for letters granted by ecclesiastical judges in cases of appeal to the Roman Court.

premisses shall be punished at the discretion of the judge or even wholly suspended from the office of procurator.

(237) Appointment of next provincial council.

In conclusion, this holy synod or provincial council has statute and decreed that the next future provincial council of this province of Scotland shall be held and celebrated without fail, and without issuing or publishing letters for its convocation, in the place of the Friars Preachers of Edinburgh, within the town of Edinburgh, on Thursday, the fourteenth of the month of August<sup>1</sup> next to come, saving, however, any circumstances that may come in the way of its meeting; otherwise, on the said Thursday, the fourteenth of the month of August aforesaid, in the city of St. Andrews, or the town of Linlithgow, in the diocese of St. Andrews, according as the bishops, ordinaries, prelates, and other clergy of the realm aforesaid shall be asked and requested.

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<sup>1</sup> The proposed meeting of the Council must have been 1550; in that year the 14th of August was a Thursday. Whether it actually met as a General Council we know not. But in that year took place the great trial for heresy of Adam Wallace, in the church of the Blackfriars in Edinburgh, in which the Archbishop of St. Andrews (John Hamilton), the Dean of Glasgow, as representing the archbishop, the Bishops of Dunblane, Moray, Galloway, and Orkney, the Dean of Restalrig, the Abbots of Dunfermline and Glenluce, the Prior of St. Andrews, and Wynram the Subprior, many other churchmen and doctors, the officials of Lothian and of St. Andrews took part, together with the Earl of Argyll, justiciar, his deputy, and several lay lords. This special assembly or tribunal, composed of churchmen, supported by the criminal authorities and certain lay lords, may have superseded or taken the place of the proposed statutory meeting of the Provincial Council; especially as it seems to have taken place at or about the time appointed for the Council, between July and September at least. Wallace's apprehension and trial was presumably an outcome of the statutes against heresy enacted by the council of 1549; the end of it was that Wallace was burnt at the stake on the Castlehill of Edinburgh the day after the trial. (See Laing's Knox, vol. i. pp. 237-241, 543-550; and compare the note on p. 148 below.)

[The General Provincial Council holden by the prelates and clergy of the realm of Scotland, at Edinburgh, on the twenty-sixth day of the month of January, A.D. 1551.<sup>1</sup>]

(238) [Approval of the statutes of the former council.]

In the first place, after the statutes and ordinances of the other provincial conventions, previously holden under the presidency and in the presence of the most reverend lord who is now primate of the whole realm, had been re-read, heard, and carefully discussed in all their bearings, this present council, consisting of the prelates of this realm constituting a provincial council, [hold] the same to redound to the surest good of the whole ecclesiastical estate and the whole body of the Christian people, and as such to deserve to be as a whole ratified, approved, and observed, along with some additions made by way of supplement in this synod, which having been confirmed by the common consent of all and by public decree, severally follow; and accordingly the council approves, accepts, and ratifies the same by tenor of the present act.

(239) Execution of the decrees of the former council.

But because, owing to troublous times and their manifold embarrassments, certain of the said formerly issued statutes, which had in them dates fixed beforehand for putting them in execution, have, nevertheless, not yet been carried into effect, therefore, with the already expressed consent of all, the council has decreed that henceforth, without any further delay, inasmuch as the same had already been to the general advantage sanctioned, so they be now regularly and carefully carried into execution, at the dates hereinafter determined, according as each one of the ordinaries shall be prepared to

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<sup>1</sup> What was January 1551, so long as the New Year was reckoned to begin on 25th March, was January 1552 in the modern reckoning. Scotland did not till 1600 begin to reckon the year from 1st January.



answer for the performance of his duty before the strict judgment of God.

(240) Of the preaching of God's word.

And amongst all of the other statutes above-written, the present convention especially approves of that formerly published statute anent the exposition of God's word to be held by rectors and bishops four times a year, together with the fines and penalties pronounced on both classes of those who fail to keep it or contravene it; and commands the said statute to be put in force by the several ordinaries betwixt now and the next synod of every diocese, and that those who contravene [the statute] or the provisions prescribed to them by the said statute, shall have explicit monitory letters sent to them without delay for the payment of their respective fines, which the ordinaries themselves or through their commissaries must, according to the tenor of the statute, apply to pious uses or to the needs of the poor.

(241) Of the theologian and the canonist.

The council also likewise approves of those statutes anent the provision of the several cathedral churches with theologians and canonists, and of the several monasteries with theologians, and for their suitable maintenance according to the tenor of the same. The whole council agrees that the statutes to this same effect shall be carried into due execution betwixt now and the feast of Saint Michael next-to-come, and that severe measures be adopted against those who fail to carry them out; and likewise decrees that the statute anent sending religious to study at the universities, and suitably maintaining them there according to the resources of their monastery, be with all rigour put in force betwixt this and the feast of Pentecost next-to-come.

(242) Of the examination of curates and vicars.

Furthermore, the whole synod has deemed it expedient and necessary, lest the cure of souls should suffer loss through insufficient and unfit curates, that the statute anent the examination of curates and vicars-pensioners be enforced by means of strict inquiry and rigid observance betwixt now and

the next following synods of every diocese; and so moreover with regard to the examination of monasteries and parish clerics.

(243) Of count and reckoning in the case of wills.

The present convention similarly approves of the constitution formerly published anent the confirmation of wills, with this addition, that no testaments at all shall receive confirmation *ad intus et extra*,<sup>1</sup> but that the several items requiring to be confirmed be specifically expressed and comprised in the inventories of the goods, but not as 'under or above a general total,' and this under the pain of losing the quota to be uplifted, which shall be applied to pious uses.

Item it orders the deans of the most reverend [archbishop] and of the reverend lords ordinaries, who have registers of testaments both of greater and smaller estates in their keeping, to show the same twice a year to the officials or commissaries-general, to give to the procurators-fiscal instructions for the preparation of count and reckoning as to these same wills, to see that the said accounts are expedited in form of law as soon as possible, as they and the said procurators shall be prepared to answer for the fulfilment of the duties of their office; or else they shall be punished for their negligence and deprived of office, lest the heirs of the deceased as well as their creditors and their legatees be defrauded of their portions of the goods.

It approves also in like manner of the former statute<sup>2</sup> enacting that the testaments of the see of the Orkneys be regulated after the form and manner observed in all the other sees of this realm, and has decreed that it be extended without exception to the testaments of the see of Sodor and the Isles;<sup>3</sup>

<sup>1</sup> Compare *sub aliqua summa generali et extra*.

<sup>2</sup> No. 213.

<sup>3</sup> The Hebrides or Western Islands of Scotland were held by the Norsemen from the ninth century till 1266, and by them were distinguished from the Northern Islands of Orkney and Shetland (also theirs) as *Sudreyar* (Lat. *Sodorenses*) or Southern Islands, the Isle of Man being also included with them. The ecclesiastical supervision was disputed by the Archbishops of York and Trondhjem; but in the fourteenth century, when the Sudreys and Man had long been dependent on Trondhjem, Man (now an English possession) became an English see, retaining the title of Sodor and Man. The actual Sodor, Sudreys, or Western Islands, which had passed to the Scottish kings in 1266, remained

since wherever the design is recognised as a pious one, the prescriptions of the law ought to be alike.

(244) Of causes relating to matrimony.

Furthermore, whereas it happens that causes relating to matrimony are too lightly despatched in court, albeit they are in their own nature eminently serious and difficult questions, and are of right reserved exclusively to bishops; therefore, it is statute by this holy convention of prelates that, in matrimonial causes tending towards divorce, no decreets shall be given henceforth by officials or commissaries in any see whatever of this realm, unless such processes and the merits of their claims have been discussed and lawfully weighed by the ordinaries in person; and then, after this has been done, let what is consonant with the sacred canons be decreed by special mandate and decision of the said ordinaries. Those who give evidence in such causes shall be prudently and circumspectly examined and closely cross-examined upon the facts and circumstances necessary and suitable for testing and proving the good faith of the witnesses; and powers for the examination of witnesses residing in other bishops' sees shall be assigned to the ordinaries, officials, or commissaries general of those sees exclusively, and to no deputies or substitutes: and no faith shall be put in witnesses who have been examined in any other way.

(245) That the parishioners attend mass every Sunday and festival.

Item the present convention, perceiving that the greatest neglect of the divine mysteries has prevailed among the subjects of the realm within these last few years, so that very few indeed out of the most populous parishes deign to be present at the sacrifice of holy mass on the Sundays and the other double festivals appointed by the church, or to attend the

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ecclesiastically dependent on Trondhjem (though the bishops sat in the Scottish Parliament) till in 1472 the see was put under the Archbishop of St. Andrews. The Scottish see seems to have retained for a time the Scandinavian name, but ultimately it was simply the Bishopric of the Isles; and *Sodorensis* is not found in this Statute in all the manuscripts (see the *Statuta*, vol. ii. p. 221).

preaching of God's word; therefore it decrees and ordains that all and sundry who wilfully absent themselves from the parish mass on days of obligation, or from sermon when preached in their parish church, be carefully noted by the curate, who shall report the same to his own dean or the visitors [deputed] for the greater offences, that they may be severely punished with the pains promulgated according to the quality of the offender and the frequency of such offence and the nature of such shortcoming; and it likewise decrees that those who have fallen into the habit of hearing mass irreverently and impiously, or who jest or behave scurrilously<sup>1</sup> in church at time of sermon, or who presume at such times to make mockery or engage in profane bargainings in church porches or churchyards, shall be not only punished with ecclesiastical censure, but shall also underlie other penalties to be inflicted at the discretion of the ordinary. And that the occasions of such abuses may be the more speedily removed, this present convention has statute that vicars and curates prohibit all kind of trading in church porches and churchyards in time of divine service on the Sundays and on holy days, and that no wares be exposed for sale or openly displayed near the precincts of churches during the sacrifice of the mass; but that every one at that time give earnest heed either to the holy orisons and prayers or to the preaching of the divine word, and this under pain of excommunication and the fine of two hundred shillings as often as the presents shall be infringed.

(246) Of the visitation of hospitals.

Moreover, the present convention, moved with pity towards Christ's poor, for whose support hospitals were from the first founded, resolves that the very salutary statute<sup>2</sup> anent the visitation of hospitals in every see of this realm be put in execution betwixt this and the feast of St. Michael next to come; and that the deans in their visitations report on the state of all the hospitals according to the tenor of that statute

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<sup>1</sup> See this conduct reprobated in the Catechism (Law's edition, pp. 68, 69). It was also made punishable by Act of Parliament in February of the same year.

<sup>2</sup> No. 217.

and at the proper time to the officials or commissaries-general, to the end that they may correct defects in this department, and provide suitable remedies for them.

(247) Addition to the old statutes on the avoiding of excommunicated persons.

Item whereas excommunication, the severest of all the church's censures, has in many places become almost of no account by reason of the corrupt and dissolute manners of men; to the end, therefore, that it may have its proper authority, awe, and effect restored to it according to the sanctions of the sacred canons, so far as these times will allow; this present convention decrees that the names of excommunicates, of whatsoever estate, degree, rank, or pre-eminence they may be, be recorded in books by the several curates of their respective parishes, and read out without fear and favour every Sunday.

(248) The names of excommunicates shall be published.

Item excommunicates remaining under sentence of excommunication for twenty days, unless they have made a valid appeal, shall, according to the relevant provincial statute, be placarded as abominable<sup>1</sup> persons by the curates on the chancel-rails of parish churches, and in other public places, and their names shall remain there until they have obtained the benefit of absolution. But when they have received absolution, their names shall be deleted from the books, and on the margin shall be written: *Such a one absolved*.

(249) Excommunicates continuing under sentence of excommunication shall have their names placarded on chancel-railings and church doors.<sup>2</sup>

Furthermore, the said curates before they commence divine service shall warn publicly and generally all excommunicate persons to withdraw from divine rites, notifying them expressly that whosoever after that warning and requisition

<sup>1</sup> At this date and for long after, *abominabilis*, often spelt *abhominabilis*, was derived from *ab* and *homine* (instead of from *ab* and *omen*), and understood to mean 'outcast' as well as 'detestable.'

<sup>2</sup> The headings of Statutes 248 and 249 seem to have been transposed.



shall intrude his presence at divine service, being at that time an excommunicate person, whether he has been denounced personally<sup>1</sup> or publicly and solemnly in his parish church, shall incur the sentence of the law, from which he cannot be absolved unless by our most holy lord the Pope, and shall also underlie the pains of the acts of parliament. And if he have been a churchman or a beneficed parson, and have slighted such warning, or so long as he shall have remained under excommunication, he shall, in proportion to the period of his impenitence, forfeit the fruits of his benefice, which shall be distributed to the poor of his parish by the ordinary or the commissaries<sup>2</sup> of his diocese; but if he have not been a beneficed parson he shall be imprisoned on bread and water so long as he continues under the censure, or he shall be otherwise punished at the discretion of the ordinary.

(250) That glebes are not to be alienated.

Moreover, whereas the property and goods of parishes and their fixed tithes of rent and income, are now everywhere let on long tacks, alienated, squandered, and dissipated under colour of the manifest profit of the parishes, but in reality only to glut the greed of the present possessors or through carnal affection to increase and augment the wealth, substance, and possessions of kin and friends, to the irreparable loss and injury of the said parishes, as well as to the utter destitution and impoverishment also of their successors, so that out of the revenues left scarcely will he [*i.e.* the parson]<sup>3</sup> be able and sufficient to bear the burdens of his parish and pay his own necessary expenses according to the [nominal] revenue of the parsonage. Wherefore, wishing to obviate such improvident management on the part of churchmen, the present convention expressly forbids manses [and] adjoining crofts designed for vicars personally residing on them and lying contiguous to the parish churches to be ever at any future time given in

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<sup>1</sup> See Statute 26.

<sup>2</sup> A commissary appointed by the bishop might act as his representative in his absence, or exercise ecclesiastical jurisdiction in special parts of the diocese.

<sup>3</sup> The sudden transition from the plural to a singular, however ungrammatical, sometimes simplifies the sense of a cumbrous sentence.

emphyteusis or let on long tacks by rectors or vicars; has decreed that the ancient constitutions made thereupon by provincial councils of this realm and sanctioned by the wisdom of former ages, and still necessitated by the exigencies of the present day, be again put in force; approves the same in all points and ratifies them; and gives them additional authority by confirming them by an ordinance to remain in force for all time to come.

(251) Of clandestine marriages, and banns of marriage, and curates' registers.

In the same manner also the present convention approves and ratifies those ancient statutes<sup>1</sup> of provincial councils anent clandestine marriages and due proclamations of the banns, and orders the tenors of the same to be inserted in the presents; making this addition to the same: That forasmuch as it is full well known by daily experience and pleas and debates on births and clandestine marriages, [that people], even although they have been legitimately born, are brought into the greatest risk of losing inheritances from their fathers or forebears, and all their fortunes, and this chiefly through lack of legal documents bearing upon births and dates of birth and proclamations of the banns; therefore it is statute that henceforth the curates of each parish shall have a register wherein shall be inscribed the names of infants baptized, together with the names of persons who by common report are held and reputed to be the parents of such baptized children, as well as of their god-fathers and godmothers, with the day, month, and year, attested by the signatures also of two witnesses; and this rule shall be observed also in proclamations of the banns, which the present convention orders to be made in the parish churches both of the man and the woman respectively, if they reside in different parishes, which registers, indeed, it wills and ordains to be treasured amongst the most precious jewels of the

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<sup>1</sup> See Synodal Statutes 66, 83, 121, 124, 155, 156. The 'Ancient Provincial Statutes' referred to do not seem to have been preserved. To this Statute 251 Lord Hailes referred the establishment of parochial registers of proclamations, marriages, and baptisms; as the St. Andrews Statute (No. 161) began the registers of deaths and burials.

church; and the deans in their visitations shall make searching inquiry into this matter and report to the commissaries such as fail to obey, in order that severe measures may be taken against them.

(252) Of the punishment of the minister [who officiates] at a clandestine marriage.

Furthermore, it adds to the statute anent the punishment of the contracting parties in clandestine marriages and of ministers who officiate thereat, and in part amends it, and decrees that priests who give their services and ministrations at the contracting of clandestine marriages be imprisoned on bread and water for a year, and be suspended also for three years from the exercise of their sacred functions; and as for the contracting parties, they shall perform public penances, to be adjusted and imposed at the discretion of the ordinaries in proportion to the rank and condition of the said parties; and it exhorts ordinaries in no instance to be too remiss in this respect, that at least through fear of punishment the very many inconveniences which hence arise may be eschewed.

(253) Anent the issue and publication of a catechism for the advantage of churchmen who have cure of souls.

Item having ever in view how urgently the duty of preaching the word of God has been commended to the pastors of the church by the prince of all pastors, Jesus Christ, to the end that the flocks committed to their care may be well instructed in at least the first elements of the Catholic faith; and reflecting, meanwhile, how many frightful heresies have, within the last few years, run riot in many diverse parts of this realm, but have now at last been checked by the providence of All-good and Almighty God, the singular goodwill of princes, and the vigilance and zeal of prelates for the Catholic faith, and seem almost extinguished; considering, moreover, that the inferior clergy of this realm and the prelates have not, for the most part, attained such proficiency in the knowledge of the holy Scriptures as to be able, by their own efforts, rightly to instruct the people in the Catholic faith and other things

necessary to salvation, or to convert the erring: therefore, in order to assist their pious endeavours and stir them to diligence, and to the end that the same true, Catholic and Apostolic faith may, by the exclusion of all kinds of error, be kept intact and uninjured; this present convention decrees and ordains that a certain book, written in our vulgar Scottish tongue, and, after the most elaborate revision, approved by the opinions and votes of the most prudent prelates in the whole realm, and of the most learned theologians and other churchmen taking part in the proceedings of the present convention, shall be put into the hands of rectors, vicars, and curates, as much for the instruction of themselves as of the Christian people committed to their care: which book it orders to be called a catechism,<sup>1</sup> that is to say, a plain and easy statement and explanation of the rudiments of the faith;

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<sup>1</sup> 'Archbishop Hamilton's Catechism' is described on its title-page as 'ane commone and catholik instructioun of the christin people in materis of our Catholik faith and religioun quhilk na gud christin man or woman suld mis-knaw'; and is said to be 'set furth be the maist reverend father in God Johne Archbisshop of Sanct Androus, Legatnait and Primat of the Kirk of Scotland in his Provincial Counsale haldin at Edinburgh the xxvi day of Januarie, the yeir of our Lord 1551, with the advise and Counsale of the bischoippis and uthir prelatiss, with doctours of theologie and canon law of the said realme of Scotland present for the tyme.' The catechism is not a system of questions and answers, but a compendium of catechetical instruction, dealing much more with fundamental verities than with debateable doctrines; and even the dogmas disputed by the Reformers are treated in a Catholic and non-controversial manner. The preface explains to the clergy how the catechism is to be read aloud for the instruction of their parishioners 'everilk Sonday and principall haly daie quhen their cummis na precheour to tham to schaw thame the word of God.' The teaching of the catechism reflects the theology of the more liberal contemporary school in the Catholic church. In his 'Historical Notice,' prefixed to the 1882 reprint, Professor Mitchell sought to trace some of its statements to earlier English and German manuals, Catholic and Protestant. The catechism was carefully edited for the Clarendon Press, in 1884, by Dr. Thomas Graves Law, who prefixed a most valuable introduction dealing with the state of the Scottish Church at this time and with the origin and the characteristic theological features of the Catechism. In language it is a masterpiece of the best and most dignified contemporary Scots. Tradition ascribed the authorship, or main authorship, of the catechism not at all to the archbishop but to John Wynram, sub-prior of the Augustinian Monastery in St. Andrews, who afterwards joined the Reformers, and had a share in drawing up their first Confession of Faith and their First Book of Discipline. Compare the earlier Statute 199 about catechising above (p. 108).

to be printed both in the name of the most reverend Lord John, Archbishop of St. Andrews and Primate of the whole realm of Scotland, presiding over the present council, and in the name of this provincial synod itself, and to be published and reproduced in many copies; having for its contents a true and faithful interpretation of the Decalogue or Ten Commandments of God, according to the sense and meaning of the Catholic Church, a plain, orthodox, and Christian instruction on the articles of the Creed and the seven sacraments, as also a complete and edifying explanation of the Lord's Prayer and Angelical Salutation; ignorance on which matters, as Bernard says in his *Declamations*,<sup>1</sup> cannot excuse the man 'who professes to be a teacher of babes, an instructor of the foolish', inasmuch as, 'being ignorant, he himself will be ignored, nay more, he will make many both to be ignorant and to be ignored. For the church has daily manifold and miserable experience how dangerous it is when the shepherd cannot find the pastures, the leader of the expedition cannot tell the road, and the vicar knows not the will of God.' Thus St. Bernard.

Also, all copies of this book, when they shall have been printed off, the present council orders and ordains to be presented to the most reverend [father] in person, that he in turn may distribute them to his own clergy as well as to each of the other local ordinaries, as many as may seem sufficient for each diocese in proportion to the number and multitude of the rectors, vicars, and curates therein; but the surplus shall remain in the hands of the most reverend himself and in his safe keeping for distribution as time and occasion shall require.

But the said rectors, vicars, and curates shall take care not to lend their copies to every layman indiscriminately, but only

<sup>1</sup> This is from the fifteenth of the *Declamationes ex Bernardo*, excerpted from his sermons by his pupil, secretary, and successor, Gaufridus, and printed with Bernard's *Opera* by Mabillon and Migne. The quotation from Romans ii. 20 is immediately followed by one from 1 Cor. xiv. 38. The word play on *ignorare* and *ignorari* from the Vulgate reading in the latter passage is not obvious in the English translations, Authorised or Revised; but the Revised Version has in the margin, 'many authorities read: "But if any man knoweth not, he is not known."'



according to the decision, advice, and discretion of their ordinary; and to these ordinaries it shall be lawful to lend copies of the said catechism to some few laymen worthy, grave, of good faith, and prudent, and chiefly to those who shall seem to desire them for the sake rather of instruction than of any kind of curiosity.

And of this catechism the several chapters and the sundry sections, beginning at the very preface or introduction and continuing to the very end of the book, without break or omission of any passage, after silence has been imposed upon all, shall be read, with the greatest possible reverence, by the rectors in person, or by their vicars or curates who take charge of the parish, standing in the pulpit, vested in surplice and stole, on all Sundays and holydays on which the people are wont and bound to hear mass, for the space of half an hour before high mass, in a loud and audible voice, distinctly, clearly, articulately, and with attention to the stops; and the recitation shall be given from the book itself completely and without stammering, without addition, change, suppression or omission, just as the words stand in the text, so that the people can profitably hear what has been read and recited in the manner described, and may derive edification therefrom, and drink in the knowledge of their salvation.

That those on whom this task is imposed by the present constitution may the better acquit themselves of it, with greater ease to themselves and greater devotion and profit on the part of the people, the said rectors, vicars, or curates must not go up into the pulpit without due preparation, but they must prepare themselves with all zeal and assiduity for the task of reading [in public] by constant, frequent, and daily rehearsal of the lesson to be read, lest they expose themselves to the ridicule of their hearers, when, through want of preparation, they stammer and stumble in mid-course of reading, and on this account lay themselves open to the curse of God, since, as the Scripture says: 'Cursed is every one who does the 'work of God negligently':<sup>1</sup> and likewise they must strive

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<sup>1</sup> Jeremiah xlviii. 10, Revised Version: 'Cursed be he that doeth the work of God negligently,' as in Vulgate; in Authorised Version, 'deceitfully.'

to read, not languidly and listlessly, but with the utmost ardour of mind, adapting voice, looks, and gesture to the delivery, that what is read may be made to sink into the minds of their hearers by the emphasis of living speech, as the Lord hath given to every one the gift [of utterance]; care, however, being taken that none of the audience be allowed to start a disputation with the said rector, vicar, or curate on the matters read and recited in the manner described; and if any one presume to attempt it he shall be delated to the inquisitors of heretical pravity.<sup>1</sup> Nor, on the other hand, shall it be lawful for any rector, vicar, or curate, when any one raises such questions and controversies, to make answer or enter into discussions thereupon, unless the local ordinary, having made special examination of his entire fitness, have given him written licence for this particular function; but he shall immediately give answer that he refers the solution of such doubts to the ordinaries themselves; and this under pain of being deprived of such office or benefice.

(254) Of the fining of those who neglect to read the catechism.

If any rector, vicar, or curate be found remiss or culpable in any point of the present statute, for the first offence he shall be fined twenty shillings, which shall, without remission, be exacted and uplifted from him; for the second, thirty shillings; for the third, the fine shall be doubled, and over and above this he shall be imprisoned on bread and water not exceeding a month; and for further offences, at the discretion of the ordinary. Nevertheless, when it happens in accordance with the tenor of the preceding statutes that expositions of God's word are from time to time delivered by religious or other ordinary preachers in place of the rector, on such days the reading of the catechism may with impunity be omitted. And upon the sundry points and parts of the present statute searching inquiries shall be made by the deans in their visitations, and thereanent shall faithful reports,

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<sup>1</sup> These cautions and instructions are largely reproduced in the (vernacular) Preface to this Catechism.

without favour or malice, be brought to the commissaries for the graver offences.

End of all the statutes of the [general] provincial council, in all its sessions, which was constituted by the most reverend lord, John Archbishop of St. Andrews, and the rest of the bishops, prelates, and abbots of the realm of Scotland, and by the clergy of the whole Church of Scotland in the years of the Lord one thousand five hundred and forty-nine and fifty-one respectively.<sup>1</sup>

<sup>1</sup> Archbishop David Beaton held a Convention at St. Andrews in May 1543; and a General Provincial Council in the spring of 1546, which imposed a tax for the cost of Scottish deputies to the Council of Trent, and may have sanctioned all or part of the proceedings against Wishart. Cardinal Beaton was murdered on the 29th May of the same year. And though his successor in the archbishopric, John Hamilton, received his appointment from the Pope on the 28th November 1547, he was not enthroned till July 1549. Next month he went to Linlithgow to hold a General Convention or Provincial Council of the Scottish clergy. Its proceedings were re-enacted and added to by another General Convention and Provincial Council at Edinburgh in November of the same year—if the latter indeed is not to be regarded as rather an adjourned meeting of the same council. In Statute 170 the Linlithgow meeting in August is by the Edinburgh meeting in November distinctly spoken of as ‘the previous General Convention or Provincial Council,’ though the various ‘sessions’ of the ‘present Council’ point perhaps to the continuity of the proceedings. Certainly Statute 261 speaks of the Council as begun at Linlithgow and ended at Edinburgh; and Statute 260 may be interpreted in accordance with that view. But 260 plainly makes the Council of 1551-2 as distinct from that of 1549 as is that of 1555; while the addendum to Statute 254 above seems to treat the statutes enacted at Linlithgow in August 1549, at Edinburgh in November 1549, and at Edinburgh in January 1551-2 as the statutes of one Council with various sessions. The enactments at Linlithgow are not known to have been separately preserved. It should be remembered that 1547, 1548, and 1549 were years of war—one of the most embittered and destructive wars the history of Scotland and England had witnessed: there were French and English armies in the country: the arrangements of parliaments and councils were liable to sudden changes, and peace with England did not come till April 1550. Of the Council summoned to meet at Edinburgh, St. Andrews or Linlithgow, in August 1550, nothing is known—unless the court which convicted Adam Wallace of heresy (see note at p. 134) took its place. The Council of January 1551-2 began by re-enacting the statutes of the preceding Conventions (see p. 135). A Provincial Council in 1555 seems to have done little more than ratify the statutes of the councils or sessions of 1549-52. The last council of all, that of March and April 1558-9 (p. 149), had quite special work prepared for it—largely the formulation of enactments to meet the demands contained in the articles of the barons, printed at pp. 156-60. (See Dr. Robertson’s Preface, pp. cxxiv-clxiv; and the Introduction to Dr. Law’s edition of Hamilton’s *Catechism*.)

[General provincial council of the clergy of the whole realm of Scotland begun in Edinburgh on the first day of the month of March, in the year of our Lord 1558; and ended in the same place on the tenth day of the month of April, in the year of our Lord 1559.<sup>1</sup>]

(255) Copy of letter from the most reverend father in Christ, John Lord Archbishop of St. Andrews, primate of the whole realm of Scotland, to the most reverend father, James Lord Archbishop of Glasgow, for the convoking of the national council of the Church of Scotland.

John, by the mercy of God, Archbishop of St. Andrews, primate of the whole realm of Scotland, *legatus natus*<sup>2</sup> of the apostolic see, and legate *de latere* of the said see for the whole realm aforesaid, to the most reverend father in Christ, our brother, James, by the grace of God and of the apostolic see, Lord Archbishop of Glasgow, wishes by way of greeting the happy governance of the charge he has undertaken and mutual charity in the Lord.

Amidst the grievous cares and manifold anxieties of mind which weigh us down, not only by reason of the duties of our pastoral office and our metropolitan and primatial authority, but also in virtue of the functions entrusted to us as legate *de latere* of the apostolic see, which we albeit unworthily discharge in this realm by clemency of the apostolic see, it is our

<sup>1</sup> The council was held partly in 1558 and partly in 1559, if the new year be counted from the 25th of March; counting from 1st January both March and April were in the year we call 1559.

<sup>2</sup> As *legatnatus* is obsolete even in Scotland, and there is no vernacular English form for this title, it is here printed without italics as is done in the case of *monsignor*; and there is good authority for regarding '*legate a latere*,' '*legate de latere*,' and '*legate latere*,' as long since naturalised phrases, more usual now than '*legate of the side*.'

peculiar and especial concern always unweariedly to watch over and by means of remedial measures and all manner of expedients provide for the defence, security, and salvation of souls, not only of our own diocesans immediately subject to us, but also of others under our jurisdiction in right of our office as metropolitan and primate of the realm, and in right of our appointment as legate *de latere* of the apostolic see, over whom the Eternal Father out of his own benignity and clemency and by nomination of the apostolic see has willed us to have the care, superiority, dominion, powers of visitation and correction, jurisdiction, right of repressing abuses, sway, and pre-eminence, that the holy Catholic Kirk of Scotland—or her prelates, ministers, and people, whatever rights of exemption they may enjoy and in what way soever they be distinguished—may nowise suffer or be liable to suffer any loss or harm in her spiritualities or temporalities in this turbulent time, when Lutheranism, Calvinism, and very many other nefarious heresies are being propagated everywhere in this realm by heretics, heresiarchs, and by the patrons, authors, promoters, and followers in this realm of the heretical corruptions of Lutheranism, Calvinism, and other nefarious heresies, who daily and continually strive with all their care, effort, and industry directly and utterly to disturb, destroy, and subvert the ecclesiastical liberty, the standing, rights, and privileges of the holy kirk of Scotland; but that by the removal of all errors and obstacles to the contrary whatsoever she may ever remain securely and peacefully as she ought in the unity of the Christian faith, in her immemorial standing, freedom, and privileges.

And that these [our aspirations] may the sooner, the more easily, the better, and the more happily prosper, by the assembling together with us of your most reverend paternity, the other prelates of this realm, and the more famous portion of the clergy: As it is usual for the general councils of the bishops to be celebrated yearly and oftener, and to be largely attended throughout their sundry provinces, in accordance with the decrees and ordinances of holy fathers so piously and profitably issued by them, both for the tillage of the Lord's field whereby the brambles, thorns, and thistles of heresies,



errors, and schisms are uprooted, immoral excesses corrected, deformities reformed, and the Lord's vineyard brought back to a better state of the greatest fruitfulness, and for the removal of quarrels and contentions which are wont to arise amongst the divers orders of the church, and by the neglect of which the seeds of the foresaid evils are sown and their growth fostered ;

Which general councils are ordered to be held by the pains, care, counsel, and unanimous concurrence of your paternity and them for the defence and maintenance of the freedom of the kirk in this realm ; and by personal compearance for the holding of a general provincial synod and convention amongst us, of your paternity and them for the aforesaid effect, to the praise, glory, and honour of the most holy and undivided Trinity, to wit, of Father, Son, and Holy Ghost, of the Blessed and undefiled Virgin Mary, mother of God our Lord Jesus Christ, and all the saints in the court of heaven, and to the vast and incalculable advantage of this universal kirk of Scotland ;

We—by our authority as metropolitan and as primate of the realm (since it rightfully concerns and behoves us, as said is, both to summon and convoke that general provincial council), and being moved to the foresaid by the pious and gracious request of our most illustrious sovereign lady, the queen regent, seeing, as she does, the exceeding great and nefarious seditions which prevail amongst her people, who withdraw and go utterly astray from the true faith—do summon, convoke, proclaim, ordain, and appoint the said general provincial council to be celebrated, holden, and constituted on the first day of the month of March next to come, within the house of the Dominican Friars at Edinburgh, with continuance and adjournment of successive days, even to the close and dissolution of the same ; over which general provincial council we, by disposition of the Most High, shall preside. Wherefore we earnestly entreat and exhort your most reverend paternity in the Lord, that together with us and the other reverend fathers, our brethren, the lord bishops of this realm, its prelates, and its clergy, your said most reverend fatherhood do personally compear, on the said day and in the said place,

with continuance of consecutive days even to the final close of the said general provincial council, beginning at eight o'clock in the morning, to consider, discuss, advise, determine, and define such measures as shall have to be considered, discussed, advised, determined, and defined for the conservation, maintenance and defence of the ecclesiastical liberty of the whole kirk of Scotland, and of her privileges and immunities. Furthermore, we earnestly, as said is, entreat and exhort you in the Lord, that ye, as it may seem best to your most reverend grace to forward the matter, do take steps by your authority as ordinary to cite, summon, and advertise the reverend and venerable fathers, the lord bishops your suffragans, and the abbots, priors, commendators, deans, provosts, and other circumspect churchmen, your subjects; and such delegates from the chapters and clergy of your cathedral, city, diocese, and province of Glasgow as have the greatest distinction, experience in law, and prudence in affairs; as also religious persons of any order whatsoever and as aforesaid claiming any manner of exemptions, to compear with us on the same day and in the said place for the purpose aforesaid, and there also to remain with us, along with your most reverend paternity, and the other prelates and clergy of the realm even to the dissolution, close, end, or prorogation of the said general provincial council inclusively. Furthermore, that, in terms of the pious and gracious request of our most illustrious sovereign lady, the queen regent, you direct and order that, as is the use and wont, public processions be made on all Sundays, Wednesdays, and Fridays, in all collegiate, parish, and all other churches, to pray God for the happy issue of this our general provincial council, for the peace and tranquillity of the commonweal of this realm, and for the removal of errors and heresies.

Given at Edinburgh, under our subscription-manual<sup>1</sup> and our seal, on the last day of the month of January, one thousand [five hundred] and fifty-eight, in the thirteenth year of our

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<sup>1</sup> See note on Statute 214; and with the whole letter compare the 'Intimation and Convocation' (No. XXI. in Appendix II., pp. 252-9), which is an expanded and greatly strengthened version of the same formula.

consecration, and in the tenth year of our translation to the primatial see of the realm.—Your reverend fatherhood's most humble brother,

JOHN, Archbishop of St. Andrews.<sup>1</sup>

To the most reverend father in Christ, James, by the grace of God, Lord Archbishop of Glasgow, our dearest brother.

(256) Mandate of James, Archbishop of Glasgow, for the convocation of abbots, priors, etc., of his diocese to the said provincial council now begun.

James, by the mercy of God, Archbishop of Glasgow, to our dean of Christianity<sup>2</sup> of Lanark, or to every other chaplain with or without cure of souls established within our city, see, and province of Glasgow, and duly summoned anent the execution of the presents, health and blessing in the Lord. We straitly direct and command you and each one of you in virtue of holy obedience and under pain of suspension from your sacred functions, to lawfully warn all and sundry the abbots, priors, commendators, usufructuaries,<sup>3</sup> ministers, preceptors, provosts, and the more eminent and more excellent rectors and vicars-perpetual of parish churches, established within your deanery, and chiefly Master Robert de Bailye,<sup>4</sup> rector of Lamington, Master Nicholas Craford, rector of Hartsyde,<sup>5</sup> Thomas Levinston, rector of Culter,<sup>6</sup> Master John Stensone, rector of Thankerton, Master Thomas Somervell, rector of Quothquan,<sup>7</sup> and Sir Thomas Wedy, rector of

<sup>1</sup> The last Archbishop of St. Andrews was John Hamilton (enthroned 1549; hanged 1571). The last Archbishop of Glasgow was James Beaton, nephew of the cardinal (appointed 1551; died 1603).

<sup>2</sup> See note on courts Christian at p. 207 below in Appendix I.

<sup>3</sup> Usufructuary is one who has the use and enjoyment of property belonging to another, without actually possessing the title or dignity.

<sup>4</sup> Robert de Bailye was probably a descendant of Sir William Baillie, who in 1368, obtained a charter of Lamington barony; Mr. Cochrane-Baillie, created Baron Lamington in 1880, certainly was.

<sup>5</sup> Hartsyde is another name for Wandell. The ancient parishes of Wandell and Lamington were formed into the parish of Lamington in 1608.

<sup>6</sup> The Livingstones, when Earls of Linlithgow, had half the barony of Culter with right of presentation to its parish church.

<sup>7</sup> Quothquan was 'in antiqua hereditate Domini de Somervell.'

Libberton,<sup>1</sup> to compear in person before us and the other lords ordinaries, prelates, and delegates of the clergy in the house of the Dominican Friars of Edinburgh, on the sixth day of the month of April next-to-come, with a view to deal with, transact, determine, and conclude all and sundry the matters which concern them, to give their attendance and consent, and generally to do whatever else shall be necessary or any way expedient in the premisses and thereanent, under pain of sentence of the greater excommunication imposed in these documents; and when the presents shall have been duly executed ye shall return them to the bearer of the same. Given under our signet at Edinburgh on the eighteenth day of the month of March, in the year of our Lord one thousand five hundred and [fifty-] eight years, and in the seventh year of our consecration.

By the said most reverend Lord Archbishop of Glasgow.

WILLIAM FOGO, secretary-depute.

[Here follow the subscriptions of the foresaid dean, rectors, etc., certifying that they have duly intimated and put in execution the archbishop's mandate as hereinbefore written.]

(257) Mandate of Malcolm vicar-general of the church of Whithorn, within the province of Glasgow, convoking the abbots, priors, etc., of the same see of Whithorn to the said provincial council now begun.

Malcolm, by divine permission perpetual commendator of the cathedral church of Whithorn, and vicar-general of its episcopal see, now vacant, to the venerable Sir Michael Hawthorn, our commissary and dean of Farnes and Rennis,<sup>2</sup>

<sup>1</sup> Libberton has since 1669 comprehended the ancient parishes of Libberton and Quothquan. The Gladstones held lands 'in inferiore villa de Quothquan.'

<sup>2</sup> The See of Galloway was divided into three deaneries: (1) *Desnes*, the west part of Kirkcudbright; (2) *Farines*, the larger and more important eastern division of Wigtownshire, containing Wigtown itself, Whithorn (*Candida Casa*), and Kirkinner named below; and (3) *Rinns*, the western part of Wigtownshire, nearly cut off from the rest by Loch Ryan and the Bay of Luce. Those are the spellings in Chalmers's *Caledonia*. *Rinns* is spelt also *Rinnes*, *Rhinns*, *Rhynns*, etc.; and *Farines*, *Farnes*, etc. It is curious that the southernmost parishes of

or to whatever other chaplain, with or without cure of souls, who officiating within our jurisdiction shall have been duly summoned in respect of the execution of the presents, greeting. Whereas the reverend father in Christ, James, by the mercy of God Lord Archbishop of Glasgow, has sent forth monitory letters to all and sundry the ordinaries, his suffragans, charging them under pain of excommunication to compear in person before the most reverend father in Christ and lord, John by the same divine mercy Lord Archbishop of St. Andrews, primate of the whole realm of Scotland, legatus natus, and abbot of Paisley, in the convent of the Friars Preachers of Edinburgh, on the sixth day of the month of April next to come, for the purpose of dealing with, transacting, determining, and concluding all and sundry the matters referable to them, in this present provincial council now begun and daily convening and sitting in the said monastery. Wherefore we direct and command you and each one of you, that you give due notice for the first, second, third, and last time, to all and sundry the abbots, priors, commendators, usufructuaries, ministers, preceptors, provosts, and more worthy beneficed clergy in our foresaid see of Whithorn, and chiefly to the venerable fathers in Christ James by divine permission abbot of Glenluce, John by the same permission commendator of Saulseat,<sup>1</sup> the venerable men Master Patrick Vaus, rector of Wigtown, Sir George Clapperton, and Sir David Paterson, rectors of Kirkinner, Master William Blayr, archdeacon of Whithorn, also Sir Andrew Arnot, usufructuary of the said archdeaconry, citing them to compear in person at the said provincial council, in the foresaid convent of the Friars Preachers of Edinburgh, on the foresaid sixth day of April next and immediately following, to sit in the same council, to assist, advise, transact, and approve all those measures which shall have to be dealt with, transacted, and resolved for the honour of God, the exaltation of the Catholic faith,

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the Rhinns peninsula are sometimes called Kirkmaiden-in-Fairness and Kirkmaibrìde-in-Fernes (the latter now in Glasserton parish). Hawthorn apparently held the deaneries of Farines and Rinns conjointly.

<sup>1</sup> Saulseat or Soulseat was a Premonstratensian abbey close to Inch in Wigtownshire. Hollywood and Whithorn were daughter houses.



and the advantage of the commonweal and of the church; and generally to do, decern, perform, and put in force on this occasion all the other and sundry matters referable to their respective offices in the premisses, under pain of excommunication, which we will that doers of the contrary shall, *ipso facto*, incur: and let the presents when duly executed be returned to the bearer. Given at Irvine under our signet and subscription-manual,<sup>1</sup> the 24th of March, Anno Domini, M.D.LVIII.

MALCOLM, vicar-general of Whithorn.

(258) [Articles proponit to the Quene Regent of Scotland be sum temporall Lordis and Barronis, and sent be hir Grace to the haill Prelatis and principallis of the clergie convenit in thair Provincial Counsall in Edinburgh.]

In the first, rememberand that our Sovirane Lord of gud memorie that last decest, in his lait Actis of Parliament for the common wele of this realme, thocht necessair to mak ane publict exhortatioun unto my Lordis the Prelatis and rest of the Spirituale Estate for reforming of ther lyvis and for avoyding of the opin sclander that is gevin to the haill Estates throucht the said Spirituale mens ungodly and dissolut lyves: And siclyk remembring in diverss of the lait Provinciale Counsaes haldin within this realm, that poynt has bene treittet of, and sindrie statutis Synodale maid therupon, of the quhilkis nevertheless thar hes folowit nan or litill fruit as yitt, bot rathare the said Estate is deteriorate, nor emends be ony sic persuasion as hes bene hidertills usit: And sin the said Estate is mirror and lantern to the rest, it is maist expedient therefore that thai presentlie condescend to seik reformation of thair lyvis, and for executiing deuly of thair offices, evry ane of them effeiring to thair awin vocation and cure committit unto thaim to do, and naymlie that oppin and manifest sins and notour offencis be forborn and abstenit fra in tym to cum, etc.

Item, that thai provid for prechings and declarings of Goddis Word sinceirly and treuly to be made in every paroch

<sup>1</sup> See note on Statute 214.

kirk of this realm upon all Sondays and utheris Holie Dayis, at the lest on Yule, Pasche, Witsondie, and every thrid or feird Sunday; and quhair that the peple ar maist ungodlie and ignorant of thar deuty to God and man, that in thai placis preachingis of Goddis Word and gud manners may be sa aft maid that be Goddis grace thai may be brocht frae thar ungodlie leving to the dew obedience of God and man, and sua that in all placis quhair maist neid is, oftest and maist ernist preching to be maid and hed, and effeiring to the quantitie of the perochin, etc.

Item, that all prechers of the Word of God, or thai be admittit to preach the samen publicklye to the peple, that thai be first examinitt deuly gif thair doctrin and profession be conform to Goddis Word and Christen fath, and sicklyke if thai be of gud manners and of fitt knowlege and condition as thai may be hable to preach the Word of God decently to the peple.

Item, that thar be na curatis nor vicares of peroch kirks maid in tymes to cum bot sic as are sufficiently qualifeit to ministar the sacramentis of Halie Kirk in sic form and order as after folowes; and that thai can distinctly and plainly reid the Catechisme and utheris directions that sal be directit unto thaim be thar Ordinaris unto the peple, sua that every man and woman, hering and seing thaim execute the premissis sa decently, may the rather convert thaimselves fra ther inordinate leving, and tharby baith know how thai suld liefie and in deid and word use thaimselvis accordingly, etc.

Item, forsameikle as thar is nathing that can move men mair to worship God, nor to know the effect, cause, and strenth of the sacraments of Halie Kirk, nor nathing that can move men to dishonor the saids sacraments mair then the ignorance and misknowladge tharof; therefore, seing that all Christin men and women, or thai be admittit to the using and ressaving of the saids sacraments, suld know the vigor and strenth of the samen, for quhat causes the samen was institute be God Almighting, quhow profitable and necessar thai ar for every Christin man and woman that deuly and reverendlie ar participants tharof; therefore, that thar be an godlie and fruitfull declaration set forth in Inglis tounge to be first shewin to the peple at all times, quhen the sacrament of the blessit

Body and Blud of Jesus Christ is exhibit and distribut, and sicklyke when Baptism and Marriage are solemnizit in face of Halie Kirk; and that it be declarit to thaim that assist at the sacraments quhat is the effect tharof, and that it be speirit at thaim be the preist ministrant, gif thai be reddy to ressave the samen, with sick utheris interrogatories as ar necessar for instructing of the poynts of mens salvation, and requires to be answerit unto be all thai that wald be participant, etc. And thir things to be don before the using of the ceremony of Haly Kirk, etc.

Item, that the Common Prayers with Litanies in our vulgar tounge be said in evry peroch kirk upon Sondays and uther Haly Dayis efter the Devin service of the Mess, and that the Evening Prayers be said efternein in likwyse.

Item, because that the corps presentes, kow, and umest claith, and the silvir commonlie callit the Kirk richts, and Pasch offrands quhilk is takin at Pasch fra men and women for distribution of the sacrament of the blessit Body and Blud of Jesus Christ, were at the beginning but as offrands and gifts at the discretion and benevolence of the givar only, and now be distance of tym the kirkmen usis to compell men to the paying tharof be authority and jurisdiction, sua that thai will not only fulminat thar sentence of cursing, but als stop and debar men and women to cum to the reddy using of the sacraments of Haly Kirk, quhile thai be satisfiet tharof with all rigor; quhilk thing has na ground of the law of God nor Halie Kirk, and als is veray sclandrous and givis occasion to the pur to murmur gretymly againes the State Ecclesiastick for the doing of the premissis: And tharfore it is thocht expedient that ane reformation be maid of the premissis, and that sick things be na mair usit in tymes to cum within this realm, at the lest that na man be compellit be authority of Haly Kirk to pay the premissis, but that it shall only remane in the free will of the giver to gif and offir sic things be way of almous and for uphalding of the preists and ministers of the Halié Kirk as his conscience and charitie moves him to: And quhair the curatis and ministers forsaid hes not eneuch of thar sustentation by the saids Kirk richts, that the Ordinares, every man within his awin diocessie, take order that the persons

and uplifiers of the uther deutys perteing to the kirk contributs to thar sustentation effeirindlie, etc.

Item, because the leigis of this realme ar haveli hurt be the lang process of the Consistorial jugement, as hes bene at mair length declarit and shewin unto my Lordis of the Spiritualitie, and that puir men havand just cause oft tymes are constrenit to fall fra thar rightuous action through lengthning of the saids process and exhorbitant expences that thai ar drawin unto as wele in the first instant as be appellation fra place to place, fra juge to juge, and last of all to the Court of Rome, albeit the matter were never sa small, and albeit men obtien sentences never sa mony be the Ordinar juges of this realme, yitt all in vain, and na execution sall folow therupon quhill the appellation be discussit in Rome, etc.: Therefore it is necessar that provision be maid for shortning of the process Consistorial for releiving of partyes fra exorbitant expenses, and that it be considerit quhat matters sall pass to Rome be appellation, of quhat avale worth and quantity thai suld be of, and that the appellation unto Rome suld not suspend the execution of sentences gevin heir within this realme.

Item, it is havelie murmurit and complenit unto the Quenis Grace be the fewars of kirkland, that thai ar compellit to pass to Rome to play the reduction of thar infestments, etc.

Item that the Actis of Parliament halden at Edinbrugh the twenty sexth day of June M.cccc.xci [11]. be our Sovirane Lord King James the Fourd of gud memorie, anent the priveleges grantit be the Paps to the Kirk of Scotland, and benefices that passis to the Court of Rome, that hurts the priveleges of the Crown or the common wele of this realme, be put to dew execution, and it be decernit that the Lordis of the Session be juges competent to the braikers tharof, notwithstanding ony exemption or immunitie or privelege spirituale or temporale.

Item, that na manner of person within this realme pretend to usurp sic hardiment as to dishonor or speik irreverently of the sacrament of the blissit Body and Blude of our Saviour Jesus Christ, bot that the samin be haldin in sic reverence, honour, and worship as efferis Christin men to do, and is comandit be the law of God and Haly Kirk, and that nane dis-



honour the Divine service of the Mess nor speik injuriouslie nor irreverentlie tharof.

Item, that na man pretend to use the sacraments and ceremonies of Marriage, Baptism, and blessit Body and Blud forsaide, nor suffer the samin to be ministrat, bot in sic manner as is aforesaid, and be sic persons as that ar admittit deulie, and ordanit to the administration tharof.

Item, that na manner of persons be sa bald as to burn, spulie, or destroy kirks, chappels, or religious places, and ornaments tharof, nor attempt ony thing be way of deid to the hurt and injuring tharof, or for deforming or innovat ing the louable ceremonies and rites tharof usit in Haly Kirk, bot that thai be usit as afore, ay and quhile forder order be takin be the Prince and ministers of Haly Kirk having power, and the samin dewlie insinuet to tham, etc.<sup>1</sup>

(259) A provincial council of the clergy of the whole realm of Scotland was summoned and convoked by the most reverend father in Christ and lord, John, Archbishop of St. Andrews, primate of the same realm, legatus natus, etc., with the assistance and consent of the most reverend father in Christ, James, Archbishop of Glasgow; convoked and present the venerable lords, the suffragan bishops of both archbishops,

<sup>1</sup> The preceding articles led to the following thirty-four statutes, which contain the Council's legislative sanction to most of the petitions preferred. The main demand of the lay lords not agreed to by the prelates was the matter of public prayers in the vulgar tongue, which they said they had no power to authorise (see Leslie, quoted in *Statuta* ii., p. 300). With these Articles compare the similar demands for reform of clamant abuses in Lyndsay's *Thrie Estaitis* and *Monarchie*; and the more trenchant proposals of the Protestants 'First Oratioun and Petitioun' to the Queen Regent, and their 'Letter' to the Queen Regent and Parliament; their 'Protestatioun' to Parliament; the Congregation's 'Letter to the Nobilitie of Scotland,' and their highly unconciliatory declaration 'To the Generation of Anti-Christ,' all in Knox (Laing's edition, vol. i. pp. 302-336).

*Hidertills*, hitherto; *feird*, fourth; *effeiring*, appertaining; *perochin*, *parochin*, *peroch*, parish—also spelt in England at or before this time *paroschian*, *parishen*, *parishion*, etc.; *or*, ere, before; *lief*, live; *quhow*, how; *eftern*, apparently for *estirnuin*, afternoon; *Pasch*, Easter; *als*, also; *quhile*, *quhill*, until; *gretymly*, *greatumly*, greatly; *almous*, alms, free gifts; *persons*, parsons; *uplifters*, exacters, receivers; *deutys*, dues, payments; *effeirindlie*, appropriately; *havely*, heavily, sorely; *instant*, instance; *pley*, plea, plead; *paps*, *paips*, popes; *hardiment*, audacity; *effeiris*, pertains to, is proper for; *ay and quhile*, away until; *forder*, further; *insinuet*, insinuated, intimated.



also vicars-general, abbots, priors, commendators, deans, provosts, professors of Holy Scripture, rectors, and other learned churchmen representing the Kirk of Scotland; it was begun at Edinburgh in the religious house of the Dominicans, on the first day of March, in the year, according to the calendar of the kirk of Scotland,<sup>1</sup> one thousand five hundred and fifty-eight, and ended at the same place on the tenth day of the month of April in the year of our Lord one thousand five hundred and fifty-nine, being held to reform discipline in the kirk of Scotland and to promote the salvation of the Lord's flock; because we saw our pastoral office had fallen on very evil times, in which cruel wolves try in every way to devour the scattered sheep of Christ, to subvert the right use of sacraments, utterly to condemn the ceremonies of the church excellently instituted by Christ and his disciples and successors, and in fine to overthrow the temples of God and the saints. Now in this council we have followed the ancient customs of our forefathers, which apostles have founded, apostolic men maintained, and eminent saints have as it were handed down to us, to wit, that as often as questions arose concerning the Christian faith, or scandals sprang up, or the morals of men stood in need of correction, so often they appointed the holding of a synod, in which they might take wholesome precautions against the perils that threatened them in their time. In like manner, under God the disposer, we have consulted in this present synod how we may best keep in the Christian faith the flock committed to us, feed it with wholesome food, put the stray sheep on our shoulders and carry them back to the Lord's fold, and govern the churches in true peace until a general council provide fitter means of redressing these so great evils. Our deliberations have been assisted by the aid, co-operation, and patronage of our most noble and most Christian Princess, Mary, queen dowager and regent of this realm of Scotland, whose pious good-will we have

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<sup>1</sup> Not, of course, any calendar peculiar to the kirk of Scotland, but the reckoning which made the year begin on 25th March (as it did in Scotland till 1600, in England till 1752) and not on 25th December, Easter, or 1st January. Events in January, February, and the first twenty-four days of March in 1558 and 1559 on this reckoning were therefore in the years we call 1559 and 1560.

experienced not only in the defence of this our realm from the fierce assaults of foreign enemies, but also in the administration of justice throughout each of the provinces of this realm, as well as in the preservation, maintenance and advancement of true religion. So we, by the grace of God and the favour of the said princess, have brought together and comprised in this constitution those measures which, in view of the character of these times, seemed most necessary and advantageous for the honour and worship of God, the reformation of church-discipline, and the salvation of the Christian people: all of which we have decreed with unanimous consent shall be published for the observance of all subjects of this realm. Wherefore we beg all orders of clergy in the kirk of Scotland, and we beseech them in the bowels of Jesus Christ, diligently to read, and when read faithfully to practise the statutes passed by the present council, and to assure themselves that by the grace of God and the help of the said queen we will see to it that they are strictly enforced. And further, we direct and command all churchmen diligently to care for Christ's sheep committed to their charge, frequently to visit and rightly to train them in conformity with the use and wont of the Catholic Church, and to reject vain novelties and doubtful opinions; for thus shall we obtain for ourselves and for the flock confided to our care the everlasting bliss which may he bestow upon us who liveth and reigneth for evermore! Amen.

(260) First Act: approval of the councils previously held at Linlithgow and Edinburgh.

After bestowing careful deliberation and mature consideration, and giving adhesion to the decrees, constitutions, and ordinances of the provincial councils very recently held and celebrated in the town of Linlithgow, in the month of August, and at Edinburgh, in the month of November, in the year of our Lord 1549, also at Edinburgh, in the years of our Lord 1551[-2] and 1555; the present synod ratifies, approves, and confirms the said decrees, constitutions, and statutes, in so far as they have not been modified, interpreted, and renewed in the present council; and decrees that the same be inviolably observed; and gives them additional force by the authority

of the present council after they had been read, examined, and discussed. Now the tenors of them are as follows: 'Sound advice has St. Paul given to us' [etc., as above, at pp. 84 to 148.]

The following are the statutes issued in the provincial council holden in the months of March and April, in the years of the Lord one thousand five hundred and fifty-eight and fifty-nine<sup>1</sup> respectively:—

(261) [Of the observance of the decree of the Council of Basel against those who live in concubinage.]

This present synod adheres to the statutes of the former council begun at Linlithgow, ended at Edinburgh, in the year of the Lord one thousand five hundred and forty-nine, and ratifies and accepts the decree of the Council of Basel pronounced against those who live in concubinage, and received in the aforesaid former council by the churchmen of this realm; to be observed in all its sections, and to be enforced as well upon the archbishops and the bishops their suffragans as upon the other prelates and the lower clergy of this realm, the metropolitans enforcing them upon their suffragans, and the bishops upon the lower clergy respectively. Also, that the most reverend lord, John, Archbishop of St. Andrews, primate of this realm, legatus natus, etc., and the most reverend lord, James, Archbishop of Glasgow, may not seem to lay grievous burdens on their reverend suffragans and lower clergy, while they perhaps are too freely indulgent to themselves in virtue of their privileges and exemptions, they have spontaneously submitted themselves, for the good example of others, to the advice, inquisition, and reproof of the reverend fathers, the Bishop of Dunkeld, the Bishops designate of Whithorn and Ross; as well as of the good and learned men Master John Sinclair, Dean of Restalrig; Friar John Greyson,<sup>2</sup> provincial of the order of Friars Preachers of this realm, and dean of the faculty of theology in the university of the city of St. Andrews; John Wynram,<sup>2</sup> professor of sacred theology,

<sup>1</sup> From 1st March 1558/9 to the 10th April 1559—a period of six weeks.

<sup>2</sup> For Greyson and Wynram, see above at p. 85.

subprior of the priory of the metropolitan church of St. Andrews, that they may make inquisition as well upon the observance of the present statute by the said [archbishops] and by themselves, as upon the correction necessary to be exercised upon the lower clergy for the observance of the said [statute]. Also, that the said inquisitors may more easily acquit themselves of their task they shall assemble at Edinburgh twice a year, to wit, on the first day of May and on the fifteenth day of January, when, after diligent inquisition held by the said six, five, or at least four of them, if they shall have discovered any point requiring amendment, they shall, first of all, advise the foresaid most reverend archbishops in a Christian and charitable manner; then they shall report, if need be, to the provincial council; and, last of all, they shall inform and notify his holiness, our lord the Pope, without delay or foreclosing of the case, as they will answer before the Supreme Judge; and if it shall happen that any of the said six be outwith the kingdom or be deceased, it shall be lawful for the rest to appoint another in the place of the absent or deceased [inquisitor]. Moreover, this council has decreed that both archbishops and bishops shall see that the aforesaid statute of the Council of Basel anent incontinence be enforced upon all and sundry the abbots, priors, commendators, and lower clergy, of exempt religious houses in their respective dioceses, yet without prejudice to their order.

(262) Concerning the offspring of churchmen.

This synod further forbids any of the prelates or lower clergy to bring up or keep in their household or society their offspring born of concubinage, so as that they should stay in their household for more than four days in every three months—and even then they must not do so openly—on pain of a fine of two hundred pounds payable for a first offence by an archbishop if found guilty in the premisses; and of a hundred pounds, if a bishop or other prelate; and of a discretionary fine in the case of the lower clergy: all which fines the ordinary at his discretion shall charge, uplift, and apply to pious uses; and for a third offence all these fines shall be quadrupled.

(263) Priests' sons not be collated to their fathers' churches.

It forbids also any archbishop or other prelate to collate his offspring, or allow them to be collated, directly or indirectly, to any kind of ecclesiastical benefice in their churches; but if collation or provision of this kind shall have been granted, it shall be *ipso facto* null and void, so that it shall be lawful for his superior or whoever the power of collation devolves on, to confer such benefice freely on such deserving churchman as they shall choose, notwithstanding the aforesaid collation or provision previously made in defiance of the provisions of law and the tenor of the present statute. Also, that the present statute may have due effect, the council has deemed it expedient earnestly to implore the queen to write supplicatory letters to our holy lord the Pope,<sup>1</sup> beseeching his holiness never more to grant any dispensations from the aforesaid statute; and if such shall have been fraudulently obtained, by concealing all mention of this statute, they shall be *ipso jure* null and void.

(264) Daughters of prelates and churchmen marrying barons not to be dowered out of the patrimony of Christ.

This present synod likewise prohibits any prelates or churchmen whatsoever, in person or by proxy, to dower their daughters or give them a dowry out of the patrimony of Christ when they shall give them in marriage to barons or other landed gentry having a yearly rental of more than a hundred pounds, on pain of paying as much money as shall have been promised or given by way of dowry, of diverting it to other purposes, and applying it to pious uses; and they shall not make their sons barons or landed gentry with a yearly rental of more than a hundred pounds, on pain of the uplifting and repayment of as much money as the lands they have given are worth: moreover, they shall in no wise make over or let, directly or indirectly, church-lands or other lands pertaining to their benefices or tithes, to their said issue and to their concubines; but if they have done so, their tacks and leases are *ipso facto* and *ipso jure* of no effect.

<sup>1</sup> For a letter on the state of the Scottish church, from Queen Mary and the Dauphin to the Pope in July 1559, see Hume Brown's *Life of Knox*, vol. ii. (Appendix) pp. 300-302.



(265) Of the households and servants of churchmen, as follows :—

Moreover, this synod has statute that no prelate or churchman, of whatever rank, degree, dignity, or pre-eminence he be, shall keep or maintain in his household or company or in any kind of daily service any manner of persons suspected of heresy, who either scorn to attend the sacrifice of holy mass and other divine rites even on Sundays and the greater festivals, or lightly esteem the sacraments of the church, or hold erroneous opinions contrary to the Catholic faith and the teachings of the orthodox fathers; but, when such culpable persons shall be found, they shall be instantly expelled from their company, service, and household, as the same prelates shall be prepared to answer before the Supreme Judge; and diligent inquiry thereupon shall be made by the ordinaries; and there shall be imposed upon every archbishop and other prelate, abbot, prior, and commendator culpable in the premisses a fine of two hundred pounds for the first offence, to be doubled and trebled for the second and the third offences; and so progressively shall a discretionary fine [be inflicted] upon the lower clergy at the discretion of the ordinaries.

(266) Churchmen shall not trade.

It has likewise statute that the decree of the former council, forbidding and prohibiting churchmen to engage in trade and secular business, shall be strictly observed; adding thereto, that if any prelates or other churchmen shall, of themselves or by others, buy victuals, fish, salt, butter, wool, or any manner of merchandise, to sell over again for the sake of a profit, such wares or their values shall for the first offence be reclaimed and taken away from such clerical trafficker. By the word mulct<sup>1</sup> is understood any discretionary fine imposed at the discretion of a judge; and if such churchman continues trafficking the double thereof shall be exacted by the ordinary of the place or by his superior, and applied to works of piety.

(267) Of dress.

It is likewise statute and ordained, that the constitutions

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<sup>1</sup> *Mulct* does not occur elsewhere in this statute, though it does in Statute 254.

of the former council concerning the dress and the tonsure of clerics and churchmen shall be enforced, even in respect of abbots, priors, commendators, and all others in the enjoyment of church-livings, under pain of the loss of the fourth part of the revenues of their benefices to be uplifted by their ordinary or superior, and applied to pious purposes, for the first offence. It likewise exhorts all and sundry the archbishops and bishops of this realm always to wear linen vestments in public and in church, and especially they must wear their rochets at the proper times.

(268) Of saying the canonical hours and of the sacrifice of the mass.

Furthermore this present council entreats and in the bowels of Jesus Christ exhorts all and sundry the prelates and other churchmen of whatsoever rank to celebrate, for the honour of God, oftener than they are wont to do, the sacrifice of holy mass in the presence of the people, that thereby they may the more easily stir up the Christian people to piety and devotion. The ordinaries shall also make inquiry whether priests and beneficed clergymen say and recite daily the canonical hours and other divine offices, and assist at the sacrifice of mass at least on Sundays and other festivals; and they shall be admonished and compelled hereto by the imposition upon them of discretionary fines.

(269) Of the visitation of monasteries.

It has, moreover, decreed that the statute previously issued for the visitation of convents of monks and nuns shall be strictly enforced. Ordinaries, either in person or by trustworthy commissaries as their delegates, shall inspect all the convents, even of exempt monks, situate within their diocese, according to the prescription of the Council of Trent, inquiring into every abuse and making the necessary reforms. They shall see to it, that a sufficient number of monks is maintained therein proportionate to the resources and revenues of the place; that the monks and nuns are liberally dealt with in the matter as well of food and raiment as of other necessities; and that ruinous and dilapidated buildings are put into repair. The said ordinaries shall rigorously fulfil the aforesaid statute,

as they shall be prepared to answer before the Supreme Judge. And prioresses of nuns shall be exhorted and compelled by ordinaries, under penalties and on pain of church censure, to render annually count and reckoning of all and sundry the revenues of their several convents to the said ordinaries of the places.

(270) Of the repairing of churches.

Item the present synod ordains and has decreed that all ruinous and dilapidated churches within the realm of Scotland shall be rebuilt and repaired in their walls, roofs, ornaments, and all necessities wont to be repaired by rector and parishioners, and they shall be compelled hereto by the ordinaries by the sequestration of their rents; and monitory letters shall be directed to rectors and their substitutes for the reparation of the chancels of the said churches. And diligent inquisition shall be made by ordinaries against breakers of images, and those who break into and burn churches; and they shall be cited before the ordinaries to be punished according to the prescriptions of law and the canonical enactments. And in like manner process shall be instituted against parishioners for the repairing of the naves of churches and the walls of churchyards. Also those who break into the treasury<sup>1</sup> shall be cited and punished as law requires. It has statute, moreover, that no trees planted and growing in churchyards shall for any reason be docked or cut down, unless with the special consent of the ordinary, rector, vicar, and parishioners of the said parish and church, and those who shall be found culpable herein shall be cited before the ordinary and punished, not only to the amount and value of the tree cut down and taken away, but in compensation for loss and damages, to be determined at the discretion of the ordinary. But if any trees shall have fallen by reason of great age or by any unforeseen accident they shall be used for the fabric of the church.

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<sup>1</sup> *Violatores sequestri* are presumably those who break into the depository where the sacred vessels were kept—the *sacrarium* of Statutes 60 and 110; perhaps those who disregard the right of sanctuary, and take out of the church goods put there for safety. See above at Statute 95.

(271) Beneficed clergy shall be compelled to take holy orders, and concerning plurality of benefices.

This present synod likewise approves of the statutes set forth in previous councils, to the effect that all who hold several benefices shall be cited by their local ordinaries between this and the first day of the month of August next to come to show their dispensations, if they have any, for holding the same, in terms of the chapter *Ordinarii*<sup>1</sup> of the *Title Of the office of the judge ordinary*, in the Sixth [Book]. All also who hold benefices shall likewise be cited before the said day by their local ordinaries; and those who have not at least been admitted to minor orders shall [be compelled to] take the orders required by the livings they hold, or they shall resign their said livings; and they shall be hereto compelled—by church censure and by the penalties laid down in the chapter *Licet Canon*<sup>2</sup> of the *Title Of Election*, in the Sixth [Book]—by the ordinaries, that those may not live by the altar who disdain to serve the altar.

(272) Of curates' stipends.

The present council also ratifies and approves of the statute set forth in a previous council,<sup>3</sup> to the effect that all curates shall have the sum of twenty merks a year, Scots money, with manse and garden, for their yearly stipend and salary: which law it has decreed shall have force in the sees of Aberdeen, Moray, Ross, Caithness, and Orkney. But in the other sees of this realm twenty-four merks a year shall be paid to every

<sup>1</sup> This is the beginning of the 3rd chapter of Title xvi (*De Officio Ordinarii*) of Book 1. of the *Sextus Decretalium*, which had already been referred to above in Statute 208 as a constitution of Gregory X.

<sup>2</sup> This constitution of Gregory X. at Lyons in 1274 is here adduced from the *Sextus Decretalium*, Book 1. Title vi (*De Electione et Electi Potestate*), and chapter 14; see also above at Statute 206. In the present statute, the *Sextus Decretalium* is no longer referred to as *Liber Sextus* (see Statutes 218, 221), but simply as *Sextus*. *Sext* was also an English title for it, and it seems to have been familiarly known in Scotland that the *Sext* and the *Clementina* constituted important divisions of the Canon Law. Thus in the *Monarchie*, published in 1554, and directed to the archbishop (presiding over this council) along with his brother apparently (see Laing's *Lyndsay*, i. p. xlvi. ; ii. 226), Lyndsay sends his readers to 'go luke the Canon Law, Boith in the Sext and Clementene' (line 4330).

<sup>3</sup> See Statute 206 of 1549 (p. 112).

curate for his stipend and salary, with manse and garden, as has been in use and wont.

Item vicars-pensioners shall be compelled by their local ordinaries to personal residence on their livings on pain of loss thereof.

(273) Of the punishment of offenders, and of offences.

Moreover, this synod has statute and ordained that the statute set forth in a previous council<sup>1</sup> concerning the office of rural deans shall be put into due execution; and further, the aid of the secular arm shall be invoked against those who impede rural deans and commissaries of ordinaries in their visitation and in the performance of their duties, and likewise against parishioners who, cited to appear at trials and inquests, are contumacious, or refuse to answer to articles of indictment. It has statute, moreover, that laymen's offences appertaining to ecclesiastical jurisdiction shall be punished and atoned for, according to the kind and degree of the offence, by public penance in the parish wherein the offence was committed or at the cathedral church, as shall seem good to the ordinary and his commissaries; and the aid of the secular arm shall be invoked against disobeyers. And procedure shall likewise be taken against churchmen's offences according to the demands of the law. But whereas it is alleged that some [officials] exact, uplift, and appropriate to their own use pecuniary fines from this class of offenders, this synod has statute that these pecuniary fines, to the payment whereof delinquents oblige themselves of their own accord, or for which they shall have found caution, shall be disposed of for pious purposes, partly within the parish wherein the offence was committed, partly elsewhere at the discretion of the ordinary. And that the present statute may take due effect, every ordinary shall choose three or four canons of his chapter or other good and discreet churchmen to take cognizance of these offences and their penalties, how to determine and inflict the latter; and some of the same shall enforce and receive payment of the pecuniary fines that have been imposed on offenders, and by the advice of the ordinary apply

<sup>1</sup> Apparently Statutes 185, 186, passed at the council of 1549.



them to the aforesaid and other pious uses, as they shall be prepared to answer therefor.

(274) Of the preaching of God's word and anent reformation of neglected learning.

This present council approves of the several statutes set forth in the previous council in favour of the preaching of God's word, and has decreed that they shall be put to due execution; and it also adds to them, that each of the bishops shall preach in person in his see not only four times a year, as was statute in the previous council,<sup>1</sup> but even oftener, as often as they can do so conveniently, according to the intention and tenor of the constitution of the General Council<sup>2</sup> in the chapter *Inter Cetera* in the Title *Of the office of judge ordinary*; and negligence herein shall be judicially inquired into at the next provincial council. And the several bishops shall also in person make a complete visitation throughout their sees<sup>3</sup> at least every two years, and on visitation they themselves and their substitutes shall preach the word of God, and they shall reform and rectify whatever they shall find to require reforming. And archdeacons shall be compelled to the execution of their office in visitation under the penalties contained in the common law<sup>4</sup> and its administration; and this in addition to the visitations which archdeacons and rural deans or bishops' commissaries have been wont to make. And furthermore, the present council has decreed that the statute of the previous council, that bishops shall maintain a canonist and a theologian at their respective cathedrals, and that every archbishop and bishop shall have a

<sup>1</sup> See Statute 240.

<sup>2</sup> The General Council here quoted is not, as at first might be suspected, the Council of Trent or a recent council, but the Fourth Lateran of 1215, whose 10th canon assumed (like so many of its canons) into the Canon Law, appears as chapter 15 of the Title xxxi (*De Officio Judicis Ordinarii*) of Book I. of the *Decretales Gregorii IX.*

<sup>3</sup> Not, of course, in every parish, for then in large dioceses they would be compelled to preach very much oftener than four times a year; but in each deanery or place where the visitations were held.

<sup>4</sup> Not common law in the English sense of the term, but the Church law of general obligation as opposed to provincial constitutions or special Papal privileges and ordinances.

theologian in his household, shall be put to execution before the next council.

(275) Of preaching by other churchmen.

Furthermore, that the laity may be instructed by more frequent preaching of the word of God, it is statute that rectors of parish churches who shall be deemed in the judgment of the ordinary able and well-fitted to preach the rudiments of the faith to their parishioners, shall themselves preach not only four times a year, as was formerly statute in the previous council,<sup>1</sup> but even oftener, at the discretion of the ordinary, under pain of losing the fourth part of the fruits of their benefices, to be uplifted and devoted to pious uses by the ordinary of the place. But those who are young and unfit for the due exercise of the office of preaching shall be enjoined by ordinaries to qualify themselves therefor as soon as possible by studying in the public schools; and meanwhile they shall, at their own expense, see that preaching is carried on by other preachers, to be examined and licensed by the ordinaries, and arrange for their places being supplied in all respects until provision shall have been otherwise made by some suitable remeid of law. And for the discharge of that duty, as has been said, all such rectors shall engage their respective preachers, agree with them as to terms, and present them to the ordinary before the first day of August next to come. Elderly churchmen, however, who have passed their fiftieth year, and have not hitherto been accustomed to preach, will in like manner see to it that this duty is discharged by others, whom also they shall countenance [by attendance], and by their personal presence give greater honour and authority to the preaching [of their substitutes]; and this over and above the ordinary teachings and readings of the catechism on all Sundays and other greater festivals, when there does not occur the address wont to be given by curates and vicars-pensioners. And likewise bishops, abbots, priors, prioresses, commendators, administrators, provosts, portioners of churches, and all who preside over the churches of any monastery whatsoever and over churches united and

<sup>1</sup> See Statutes 195, 240; and *cf.* Statute 188.

annexed to bishops' mensal property,<sup>1</sup> to chapters, and to collegiate foundations, shall diligently see to it that the word of God is preached in their several churches either by themselves or by substitutes, to be approved and licensed by the ordinary of the diocese, with whom they shall agree [as to terms], and whom they shall present to the ordinary before the said first day of the month of August; and if this first day of the month of August shall have elapsed without the said preachers having been engaged and presented to the ordinary, every ordinary shall exact and uplift the fourth part of the fruits of every parish not provided with a preacher, which he shall apply partly to the support of the preachers, and partly distribute and dispose of for other pious uses.

(276) Of the uniformity in doctrine to be observed by the preachers.

This present synod likewise approves of the statute set forth in the previous council on the method and model of preaching to be observed by preachers; whereto this present council also adds that no one shall take on him the office of preaching without having been first examined by the ordinary of the place and lawfully admitted to the exercise of this office of preaching; and admitted preachers shall in preaching carefully and diligently occupy themselves with those doctrines which have been defined on matters of the Christian faith and religion by the testimony of holy Scripture and of approved holy doctors and fathers, and by the authority of the Catholic church and General Councils; and they shall instruct their people therein, especially as regards the articles underwritten. These articles are as follows:—

Of the traditions of the church.—Article First: <sup>2</sup>

We must hold with firm faith, not only what is communicated expressly and plainly by the Scriptures, but also whatever the holy Catholic church, or a General Council, lawfully

<sup>1</sup> See note 2, p. 97.

<sup>2</sup> It has been pointed out by Dr. Mitchell that this article follows very closely the words and substance of the Louvain *Declaratio* (1554), with the significant omission of all mention of the Papal authority (see Dr. Law's Introduction to Hamilton's *Catechism*, p. xxxiv; and Bishop Wordsworth in the *Scottish Church Review*, January 1885).

convoked, has communicated to us, defines, and determines as proper to be believed; and we must likewise observe what she has ordered to be observed in respect of sound morals; and it is heretical persistently to assert the contrary.

Addendum.—The traditions and ordinances of the church, as, for example, about days of fasting and abstinence from foods, due keeping of holidays or resting from servile work, and other [duties] of this nature, lay Christians under the obligation of observing them in public and in private.

Of veneration and invocation of saints.—Article Second :

It is rightly observed in the church, that we venerate the saints living with Christ in heaven, and invoke them to pray for us; for in answer to their prayers and intercession Christ grants us many graces here, and through them works many miracles upon earth.

Of the right use of images.—Article Third :

The images of Christ and the saints are lawful for the representation of the same and in order to their imitation; and the said images are to be treated with reverence, and not subjected to derision and jeerings

Of purgatory after this life.—Article Fourth :

We must firmly believe that after this life there is a purgatory for souls, in which is paid the penalty still due for their sins; who are nevertheless succoured by the good works of the living, so that thereby they are more speedily released.

Of the existence of the body and blood of Christ in the sacrament of the eucharist.—Article Fifth :

In the sacrament of the eucharist the very body of our Lord Jesus Christ is really present, that is to say, his true flesh and his true blood, yea, the whole Christ, God and man; and therefore in the eucharist we rightly adore neither bread nor wine, nor even those said species which are presented to our bodily eyes, but our Lord Jesus Christ crucified for us, whether [it be] at mass or apart from mass, whensoever the eucharist is set out to public view, or as often as it is borne round by a priest in public solemnities.

Of lay communion under one kind only.—Article Sixth :

Communion under both kinds is not necessary to laymen

for salvation, but by lawful sanction of the church it suffices to dispense the sacrament under one kind only, to wit, of bread, wherein we must believe that the flesh and the blood, and therefore the whole Christ, is received under one kind only.

Of the utility of the mass.—Article Seventh :

The sacrifice of the mass, being instituted in commemoration of Christ's passion, benefits both the living and the dead by the efficacy of his passion.

Of the lawful minister of the sacrament of the eucharist.—Article Eighth :

Only to the priest of the gospel, lawfully ordained according to the rite of the church, has been granted the power of blessing, consecrating, or dispensing the sacrament of the eucharist.

(277) Of exhortations preparatory to the administration of the sacraments.

Furthermore, that the Christian people may more easily and profitably understand the purpose, efficacy, and use of the sacraments of the church, this present council has statute that certain Catholic exhortations shall be authorised by this council to be issued and hereinafter set down, and they shall be short declarations upon the sacraments of baptism, the holy eucharist, extreme unction, matrimony, which the several parish or other priests, the lawful ministers of the said sacraments, when about to administer the said sacraments, shall make use of by giving before each sacrament its own appropriate and befitting exhortation, and reciting and reading it publicly and distinctly; also the several vicars and curates, when on Sundays and on the greater festivals they are about to celebrate the sacrifice of holy mass, shall likewise read publicly in church the hereinafter written exhortation and declaration on the same, that thereby the Christian people may be present and assist at the divine mysteries with greater piety and devotion. And bishops shall do the same before the ministration of the sacraments of confirmation and orders, and priests acting as confessors in the sacrament of penance. And



the exhortations referred to are recorded in the appendix to this council.<sup>1</sup>

(278) Of sending monks to the universities.

It is statute and decreed by the present synod that the statute shall be put in force which was previously framed hereupon, regarding the sending of monks to study at the universities; and the several abbots, priors, and commendators shall show and present to their ordinaries the names of those who are being sent to the universities between this and the first day of the month of August next-to-come, and likewise certificates from the university at which they have been matriculated; and hereupon diligent inquiry shall be made by the ordinary.

(279) Of the fitness of those who are to be promoted to benefices.

This present synod, diligently and attentively considering how many scandals are springing up in the church of God through those who are unfit in age, morals, and learning being admitted and promoted to church livings, has statute and decreed that in future no one shall be presented, or anyways promoted to any church living whatsoever—by the local ordinary or any other [superior] to whom belongs with full powers by law and custom the collation, provision, and disposition thereof, or when in other cases it pertains to the presentation of some patron—unless the presentee shall, after careful examination, be found by the ordinary to be fit for the exercise and fulfilment of the duties attached to such benefice; or else such collations, provisions, and dispositions shall be on that account null and void; and in that case the power of disposing and collating, for that time only, reverts to the superior who has the right of provision in a case of devolution, as if such collation had not been made at all. And for the observance of the present statute the council has decreed that our most serene lady the queen be earnestly and

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<sup>1</sup> Not what Dr. Robertson printed in the appendix to the text of the Statutes (in vol. ii.), or in the appendix to his Preface (in vol. i.), but the *Godlie Exhortation* at p. 188 below; the only one of the series of exhortations or declarations that is known to have been preserved.

humbly petitioned not to nominate, present, or suffer to be promoted to bishoprics, abbacies, prelacies, or any other kind of preferment belonging or appertaining to royal presentation, supply, or nomination, any one unless in morals, learning, and age he shall be found fit and qualified to perform, with honour to God and benefit to the people, the duties incumbent on [the holder of] the said benefice, laying it on the conscience of the lord ordinary who ordains or collates, to bethink him whether the blood of those who perish will not be required at his hands when he shall appear before the dread tribunal of God. And likewise the council has thought it expedient that supplicatory letters shall be sent to our most holy lord the pope, praying him not to promote or suffer to be promoted to prelacies or any other preferments any one save such as is qualified in respect of age, morals, and learning.

(280) Of executors-dative for testaments.

Intending and desiring to obviate the loss sustained by children, wards, and others having interest in the goods and chattels of those who die intestate, and to secure their indemnity, this provincial synod has statute, decreed, and ordained that in future no executors-dative shall be appointed or confirmed to the goods of those who die intestate, or to goods not included in a will, except by previous edict duly executed, indorsed, and publicly proclaimed at time of mass in the parish church of the deceased, at least fifteen days beforehand, citing by name the intromitters with the goods of such dead person and all others having interest therein; also certain of the nearer kinsmen of the deceased, who in the judgment of the ordinary are specially well qualified, shall, if they shall have compeared, be confirmed as executors-dative, sufficient caution having however been given for the faithful and due disposition and administration of the goods, and for rendering and making account at the end of the year, which shall be reckoned from the date of the confirmation of the testament, as well as for a proper return as to the payment of debts recovered by creditors, if there be any such, in proportion to the value of the estate, but without prejudice to the estate belonging to the wife and children of the

deceased; and if it be the case that the kinsmen on both sides, having been cited, as said is, shall have refused to accept office of executry, or shall not have compeared, other men responsible and of good credit shall be appointed by the ordinary for the due discharge of that office on similar caution having been found. The local ordinaries are also forbidden to receive and assign to themselves or their relations any of the said goods, except the usual quota.

(281) Of mortuaries.

Item for relief and aid of the poor, and to put an end to the clamour and murmurs of grumblers at mortuaries, this provincial synod has decreed that the same shall be paid as follows: to wit, on a division of the dead's inventoried goods, after deduction of his debts, having been made in their just parts, when the dead's part shall have amounted only to ten pounds money Scots, only forty shillings shall be paid to the vicar of that parish as composition for the annal<sup>1</sup> or the mortuary, which was wont to be paid, and for the uppermost garment;<sup>2</sup> and when the dead's part shall not have amounted to ten pounds, but shall have ranged between that sum and twenty shillings, relative payment out of the dead's part shall be made to the vicar in the proportion above stated, at the

<sup>1</sup> Annals or annuals are masses said daily for a year. See note 2, p. 55.

<sup>2</sup> *Veste superiore*. Compare the *major pannus et melior* prescribed as mortuary or corse-present when there is no cow, in Statute 88. Failing the cow, the corse-present (*corporale exenium*) was sometimes the uppermost cloth on the bed, sometimes the outermost garment of the deceased; and in Scotland *umest claith* (*umest clayis*) seems to have referred sometimes to the one and sometimes to the other. Thus Dr. Laing in his notes on the *Thrie Estaitis* interprets *umest claith* as 'the uppermost cloth on the bed'; but in his glossary to Lyndsay defines the *cors presentis* or mortuary as 'usually a cow or the upmost clothing of the deceased' (compare 'kirtil nor kow,' *Thrie Estaitis*, 2826). Lyndsay's usage seems to imply that at a first death in a family, the priest took 'the gray cloke that happis the bed' (*Monarchie*, 4712; 'the gray frugge that covers the bed,' *Thrie Estaitis*, 2731); and if the mother of a family follows her husband to the tomb, the rug being gone, the parson or vicar seized as corpse-present 'thair umest clayis, that was of rapploch gray' (*T.E.*, 2000), the outermost piece of wearing apparel of one or both of the unfortunates, 'the pure cot of aploch gray' (*T.E.*, 2736)—'the poor coat' being either the father's coat or the mother's petticoat. In England, too, the best garment, or even 'the best thyng about the house,' was expected as corse-present.

rate of forty shillings to the ten pounds; and when the dead's part shall not have exceeded twenty shillings, nothing shall be paid out of it for the mortuary or the uppermost garment. But if the dead's part shall have exceeded the sum of ten pounds of the said money Scots, then the vicar shall be paid in full for the premisses, as was customary of yore, the present statute notwithstanding. And as regards barons and burgesses, the ancient usage shall be retained. But if any [executors] shall not have made true inventories of the goods of deceased persons, or a just valuation of the goods contained in the said inventories, then the ordinaries shall provide for a suitable compensation in favour of the vicars. And this statute shall be passed and published in the several episcopal synods, notwithstanding any previous constitution.

(282) Of the non-letting of church lands in feu-farm or in emphyteusis.

Having considered the detriment to the church of God, the impoverishment of the lieges of this realm, and the great damage thereto that has thence arisen (especially in time of war and at other times through lack of able men for the defence of the realm), which has been done by letting churchlands in feu-farm, emphyteusis, and other forms of leasing and renting to others than the ancient native<sup>1</sup> tenants, occupiers, and tillers of the lands; the present council forbids and prohibits any archbishop, bishop, abbot, prior, prioress, commendator, provost, dean, usufructuary, preceptor, minister,

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<sup>1</sup> *Nativi* were usually the descendants of a conquered population whom the invaders compelled to become serfs, bound to the soil. The emancipation of the natives, neyfs, serfs or villeins was gradual in England and Scotland. The last process in Scotland by which the claim to a neyf was proved by his lord was issued in 1364: by the middle of the fifteenth century the neyfs had been absorbed into the free population, but they and their descendants still, no doubt, lived on on the same lands and cultivated them as before their emancipation. Hence their position on the granges of the abbeys or on the church lands seems rather to approach that of kindly tenants, bound to perform service or payment or do both, with a certain fixity of tenure, and some privileges. See Cosmo Innes's *Scotch Legal Antiquities*, lecture vi. The peculiar thralldom of colliers and salters, which developed after the Reformation and did not cease and determine till 1799, has been proved to be in origin entirely distinct from mediæval villenage; see *Edinburgh Review*, January 1899.

canon of cathedral or collegiate church, prebendary, rector or vicar, or other churchman, secular or regular, hereafter to let, grant, or rent in emphyteusis, or on long or short lease, any church-lands belonging to his benefice, save only to tenants and tillers of the same.<sup>1</sup> And if it shall have happened that any such lands have been let in contravention of the present constitution, the leases of the same, whether they are granted in feu or on lease for a certain number of years, shall be *ipso jure* null and invalid on the passing of an irritant decree.<sup>2</sup> And archbishops, prelates, and the other church dignitaries and beneficed men aforesaid, thus directly letting lands in feu or on lease for a number of years, shall be mulcted for one year in the third part of the rents of that benefice whereto such lands belong, and this mulct shall be uplifted and applied to pious uses by their superior; and the same fine shall be imposed for one year on canons and prebendaries in respect of the third part of their salaries from cathedral and collegiate churches, and on religious persons in respect of the third part of their portion from convents and abbacies; and this fine shall likewise be applied at the discretion of the ordinary of the diocese to pious uses; while the alienations or leases, which they have made, do or will make in contravention of the tenor of the present statutes, shall, nevertheless, be *ipso facto et jure* wholly null and void: and on these matters the ordinary of every diocese shall be bound to make

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<sup>1</sup> Lyndsay, who more fully and explicitly than the other 'temporall lordis and barronis' (see Statute 258 above) formulated the grievances of the people against the church and churchmen, recurs more than once to the dispossession of yeomen and cottars by gentlemen as a recent but cruel abuse on the part of churchmen (*Thrie Estaitis*, 2573-7)—

How Prelats heichtis thair teinds it is weil knawin,  
That husbandmen may not weil hald thair awin;  
And now begins ane plague, among them new,  
That gentill-men their steadings taks in few [feu]:

and demands that a just king and parliament should insist and enact that such lands—

Be set in few to laboreris with thair hands (2808)

or

Til verteous men that labours with thair hands (3823).

<sup>2</sup> An 'irritant clause' in Scots law is a clause declaring something null and void under certain conditions.



strict inquisition. And furthermore it is statute that if any of the said tenants and tillers of lands who have obtained such tacks, or shall happen to obtain them hereafter, shall, for any reason, wish to resign the said lands into the hands of their overlord in favour of any manner of persons; then in that case it shall be unlawful for the said archbishops, bishops, abbots, prelates, or any other of the aforesaid beneficed churchmen to admit or receive into possession of the said feus or tacks other tenants who are of greater or higher degree than the said resigning tenants are, so long as they are sufficient occupants of these lands and able to make payment for the said lands according to the terms of the lease; with this proviso, however, that if the said tenants and tillers of the lands shall happen to fail in the payment of their rents or commit any other offence on account of which they should lose these leases or be justly evicted from them, it shall be lawful in that case for the said prelates and beneficed churchmen to remove such tenants, and either occupy the said lands with their own stock or let them to other persons who are not of higher degree and better condition, but who are sufficient husbandmen, and to no others, on the pain *ipso facto et jure* of the forfeiture of the third part of their rents aforesaid, as well as of the nullity of such lease of their rents. But with respect to church-glebes, the present synod forbids and prohibits that in anywise or for any reason shall they be let in feu or emphyteusis, or even beyond three years, and this only to tillers and occupiers who are in present possession of the same; it being, however, understood that the present statute shall hold good only for the five years next to come.

(283) Of teinds.

It is statute likewise and ordained in favour of poor tillers or husbandmen, that the teind-sheaves, which at present are in the hands or at the free disposal of archbishops, bishops, abbots, priors, commendators, prioresses of nuns, deans, provosts, canons or prebendaries of cathedral or collegiate churches, rectors, or other churchmen as well regular as secular, shall either be collected by churchmen themselves for

their own uses or shall be let and leased to none but tillers and cultivators of the lands; unless the perversity, perchance, of the said husbandmen shall thwart [such arrangement] who for now close on ten years refuse to pay for these teinds the rents which have been in use and wont, at least generally, to be paid to churchmen, and to find sufficient caution for payment being made; and if when the tillers themselves and the occupiers of the lands refuse to pay such tithes it shall happen that they are let to others, let the letting be for three years at most; but, as for other teinds which are in the hands of others [*i.e.* of laymen] for a long or a short term, whether [they have been granted] upon letters of assignment or are in good-will,<sup>1</sup> the churchmen to whom appertains the letting of these teinds are by all means bound to let them, as above provided, to none but tillers and occupiers of the lands. But if they cannot do so conveniently, they shall at least with all prudence strive to make with the tacksmen who renew their tacks of these teinds such a bargain that these teinds can be let to the tillers and husbandmen at a moderate price or at a valuation proportionate to the rate of their rent; lest such an occasion give rise to slanders upon churchmen, and promote murmurings [against them] hereafter. And let the consciences of all and sundry be charged in regard to the keeping of these rules, according as they shall be prepared to answer at the day of judgment. The present decree to have force for five years only.

(284) Of the abridgment of processes in courts of consistories and of the office of procurators.

It has furthermore decreed that all and sundry the statutes set forth in the former council anent the abridgment of processes in courts of consistory and the office of procurators shall be observed, and put in practice and carried into due execution, and that in all summary causes process shall be taken summarily and amicably, without the fuss of a trial and without delays, so far as it can be lawfully done. Now what summary causes are shall be set down in the appendix

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<sup>1</sup> *Tolerantia*; an arrangement terminable when the proprietor chooses.

to the present council<sup>1</sup>; adding, moreover, that if any procurator or advocate shall have produced in a trial a frivolous objection by way of reply, duply, triply, quadruply, or shall have been convicted of other overt misdemeanour, he shall be mulcted in a fine of forty shillings for the first offence, of five pounds, money of this realm, for the second; which fines shall be applied, at the discretion of the judge, to pious uses, and shall be non-remissible; and for the third offence he shall be suspended and removed from the office of procurator or advocate in that court for ever.

(285) That there shall be no absolutions given 'for [unexpressed] reasons' or to qualify for taking legal action.

It is likewise statute that from sentences of excommunication, or other church censures, fulminated from whatever cause, no absolution shall be given hereafter, by archbishops, bishops, their officials and commissaries, or other ecclesiastical judges, whether ordinaries or depute legates, with the [vague] formula: 'On account of motives' or 'Out of consideration of motives,' or such like phrases; but either they shall be granted simply, or the reason for which they are granted shall be inserted in the said absolutions; otherwise they shall be of no force or account. Item from sentences of excommunication or other church censures, fulminated from whatever cause, even of contumacy, no absolutions shall be given to the effect of enabling any one to bring, prosecute, or decide an action, or to exercise any other function of a member of court, save only of giving evidence; otherwise they shall be *ipso jure* null and void.

(286) That all transactions of chapters shall be done in accordance with the rules of chapters.

It is likewise statute that in all chapters and convents all things shall be done and transacted in accordance with the rules of chapters in all manner of capitular transactions, whether as regards giving of consent or as regards subscriptions and appending of seals; otherwise the transactions done and transacted therein shall be null and void.

<sup>1</sup> Not included in any of the texts preserved. See note to Statute 277.

(287) Of officials and bishops' commissaries.

It has further decreed that officials and commissaries of ordinaries, and their delegates whatsoever, shall be priests and otherwise sufficiently qualified for the exercise of ecclesiastical jurisdiction; and the several archbishops, bishops, and others who have the jurisdiction of ordinaries shall put this statute into execution between this and the first day of the month of June; and when the said day has elapsed, superiors shall make good the negligence of their subordinates.

(288) Of the full age of the lieges of the realm.

Furthermore, it decrees and declares that when lieges of this realm shall have completed the twenty-first year of their age, they shall be, and shall be reckoned to be, of full and perfect age; and that the practice which has obtained by the law and custom of this realm in the civil court<sup>1</sup> shall be authorised likewise to be observed in the ecclesiastical court; and if there are any suits pending before the judges they shall be tried according to the tenor of the present [statute].

(289) Of the collectors of fines.

Moreover, it is statute that in every diocese the ordinary shall depute three or four churchmen, skilful and sufficient for gathering and levying all and sundry the aforesaid statutory fines and pecuniary penalties, with powers to distribute the same among works of piety, in the above stated and other lawful ways, with the advice also of their respective ordinaries; and these delegates also shall be bound to render account of their administration and distribution of the moneys at the next provincial council.

(290) That all parishioners attend the sacrifice of the mass.

Item that rectors of parishes shall obtain monitory letters from their respective ordinaries, to the effect that all their parishioners shall devoutly attend the divine offices, and

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<sup>1</sup> Scots (civil) law, like English law, held twenty-one to be the age of majority; but canon law, following Roman law, extended a modified infancy from puberty till the age of twenty-five, during which the minor's acts were (not void but) voidable. This Statute (see Dr. Robertson's note on it, vol. ii. p. 307) accommodated ecclesiastical to civil law in Scotland.

chiefly the sacrifice of the mass ; and the rural deans and other commissaries shall every year make strict inquisition against those who refuse to attend.

(291) Of the model for drawing up letters of ordinaries and other monitory and inhibitory letters.

It is statute that monitory or inhibitory letters anent provisions and collations to benefices and anent teinds shall in future be granted by the local ordinaries and their officials under pain of excommunication, and with this additional clause: ‘ Which penalty we inflict in these writs upon contraveners hereof, and which persons ye shall denounce and publish as excommunicated in your churches, and wherever the bishop is present, on Sundays and other festivals, at time of high mass and of the divine offices.’

(292) Of making an agreement before Easter in regard to the smaller teinds and other offerings.

Forasmuch as not only evil, but also the appearance of evil, must, according to the maxim of the apostle, be eschewed, and chiefly indeed in the service of the sacraments of the church, which our Lord Jesus appointed to be performed and ministered to the faithful gratuitously, even as he gratuitously instituted them : wherefore, for the avoidance of popular discontent, especially at Easter-tide, when it happens that the church’s ministers are, at the service of the sacrament of the body and blood of Christ, so solicitous to exact the smaller teinds and certain other offerings, as to seem to sell that most sacred sacrament for the consideration of the delivery of a garment,<sup>1</sup> to the great scandal of Christians in the eyes of the rude rabble at least, and indeed of every one who has been at church ; this synod decrees and ordains that vicars of parishes, so far as it shall rest with them, shall come to an agreement with their parishioners a short time before Lent, in the month of January, in regard to such smaller teinds,

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<sup>1</sup> See note 2, p. 178.



whether they are personal or mixed,<sup>1</sup> and in regard to the other offerings due to the church: and to this effect, they shall obtain, procure, and see put in execution monitory letters, drafted in due form, from their respective ordinaries, so that at the solemn service of Easter the Christian people may have greater leisure for prayer, and may also receive that sacrament with a more ardent spirit of devotion and with divine fervour, once a positive interdict has been put upon all exactions of dues at that time. The free-will offerings of the faithful may be accepted after the service of the said sacrament is over, from such as may wish to offer them of their own accord; but nothing shall be exacted beforehand, as is above decreed.

(293) Of the christening of infants according to the form instituted by Christ, and received by the church.

Whereas Paul Methven, William Harlay, John Grant, John Willocks, John Patrick, and several other apostates from the Catholic faith and from the unity of the church, have not only scattered broadcast the baneful dogmas of heresy, but have also introduced a form of christening which is new, unwonted, and nowhere ever heretofore received by the Catholic church, whence it may reasonably be doubted whether infants baptized by them and their likes have or have not been really baptized: wherefore, for the removal of all dubiety on this head, and to take better and more certain measures for securing the salvation of infants, this synod has decreed that such infants shall be christened according to the form instituted by Christ and received by the church, by priests who, in using this form received by the church, shall pronounce these words: 'If thou art baptized, I do not baptize thee; but if thou art 'not baptized, I baptize thee in the name of the Father,' etc., adding also the sprinkling with water, the anointing with oil, and the other rites wont to be observed in baptism. And that the said decree may be soon and easily carried into effect, for

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<sup>1</sup> Tithes were wont to be divided into (1) personal, when arising from labour, art, or trade; (2) prædial, when coming directly from land, as grain, hay, fruit, and wood; and (3) mixed, as accruing from beasts which are fed on and from the land.

God's glory and the salvation of children, parents of children shall be notified to bring them or have them brought to their own parish churches, and presented to the vicar, curate, or other priest, the lawful minister of that sacrament, and that before the expiry of the fifteen days immediately following such notification, under pain of the greater excommunication. Furthermore, the present synod forbids any children hereafter to be baptized by any but priests, and that according to the accepted form of the church, save in the article of death, under pain of the greater excommunication pronounced as well against the father as the mother, as also against the ministers, the godfathers and godmothers, and on pain of the other penalties enacted by law.

(294) The sacraments of the eucharist and of marriage shall not be ministered save according to the accustomed form instituted by the church.

This present synod likewise forbids any one hereafter to dare to minister the sacraments of the eucharist or of marriage, or to receive the same, unless according to the wonted and accustomed form of the church, which has hitherto been duly observed and been customary for priests to celebrate; and that under pain of the greater excommunication inflicted on both ministers and celebrants, and also on the receivers of the same.

At the church of the Dominican friars, in the provincial council of this realm of Scotland, begun, as above mentioned, and to be ended,<sup>1</sup> or [having been] ended, on the tenth day of the month of April, in the year of our Lord one thousand five hundred and fifty-nine.

(295) Notification or intimation of the future provincial council next to come.

This present synod gives notice and intimation to the most reverend the archbishops, their suffragan bishops, the abbots,

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<sup>1</sup> At the beginning (see Statute 259, p. 161), the alternative 'to be ended' is not given. The council was designed to go on to the 10th April: when this note was written, it had practically ended.

priors, commendators, and all the other churchmen of this realm, that there will be a council holden at Edinburgh, in the conventual house of the Dominicans, on the Septuagesima Sunday<sup>1</sup> next to come; there diligently to inquire whether all the decrees of the present council have been put to execution and at the same time ripely to consult upon other matters of church discipline, if any shall meanwhile arise. Furthermore, the present synod wishes all persons of ecclesiastical standing to deem themselves by this intimation duly notified and summoned to the said council next to come.

(296) Ane Godlie Exhortatioun<sup>2</sup> maid and sett furth be the maist reuerende father in God Johane Archibischope of Sanctandrous, Primate of Scotland, Legat, etc., with the auyse of the Prouinciale Counsale, haldin at Edinburgh the second day of Marche, the yeir of God one thousand fyve hundreth fifty aucht<sup>3</sup> yeiris, to all vicaris, curatis, and vtheris consecrate preistis lauchfull ministers of the sacrament of the altare, to be red and schawin be thame to the Christiane peple, quhen ony ar to resaeue the said blyssit sacrament, etc. (With the Queen's privilege.)

Devote Christiane men and wemen, quha at this present tyme ar to resaeue the blyssit sacrament of the altare, wytt ye perfittlie and beleue ye fermlye, that vnder the forme of breaid, quhilk I am now presentlie to minister to yow, is contentit trewlie and realie our Salueour Jesus Christe, heale in

<sup>1</sup> The next Septuagesima was the 11th February 1559/60. Needless to say, the proposed meeting of the council never took place: much had happened before next Easter to render it impracticable, the Reformation was in full course, and the courts and judicatories of the old church powerless.

<sup>2</sup> Spottiswoode and others confounded this little treatise, issued by the authority of the Synod in March 1559, with the Catechism (see Statute 253 above) authorised by the Synod in January 1551-2. The *Godlie Exhortatioun* was long supposed to have been lost; but a copy of the original four-page tractate having been discovered in the library of a Catholic priest at Dumfries, it was reproduced in facsimile by Dr. David Laing in 1855 for the Bannatyne Club, and preserved in its *Miscellany*, vol. iii. (pp. 313-320). From Archbishop Hamilton's having allowed it to be sold at the price of two pennies Scots, it was popularly known as *The Two-penny Faith*.

<sup>3</sup> Reckoning the year not from Lady Day but from 1st January, the date of this address is 1559.

Godhede and manhede, that is baith his bodie and blude and saule, coniunit with his Godhede, quha in his mortale lyue offerit hym self upon the Croce to the Father of Heuin, ane acceptable sacrifice for our redemption fra the deuyll, syn, eternall dede, and hell, and now in his immortall lyfe sittis at the ryght hand of the Eternal Father in Heuin, quhame in this blyssit sacrament, inuisiblie contenit vnder the forme of breade, I am to minister to yow. And wit ye that ressaue this blyssit sacrament worthelie, ye ressaue the blyssit bodie and blude of our Saluoure Chryst for the fude of your saulis, to strenth yow aganis all mortall and deidlie synnis and power of the deuill, to mak yow starke in your faith towartes your God, to get his grace largelie ekit to yow, to keip vp your hope vnto the mercye and glore of God, to kendle your hertis, and mak yow ardent into the lufe of God and of your nyctbour, to cause yow haue quick remembrance of the blyssit Passioun of our Saluour and Redemptour, Jesus Christe, quhilk he tholit for yow; quhairthrouch with leuyng faith ye maye get and obtene remissioun of your synnis, and be reconciliat to the Father of Heuin, and als be delyuerit fra eternale damnatioun, and brocht to eternal lyfe and glore.

Attoure, wytt ye Christiane and faithfull peple that quha ressauis worthelie this blyssit sacrament, ar vnit and coniunit to the mistical bodie of our Saluour Jesus Christe: that is to the Sanctis of Heuin, and to thame that hes the grace of God in the erd, and maid quick and leuyng membris of the samyn misticale bodie. Heirfor I maist hertlie for the maist tender lufe, reuerence, and mercy of Christe Jesus our Saluour exhort yow all Christiane peple that ye ressaue this precious sacrament with perfyte faith, beleuyng fermlye that Christ Jesus your Saluour tholit passioun and deid vpon the Croce for your synnis. In remembrance quhareof, with a perfyte conscience, ye aucht to ressaue the samyn: and because this sacrament is the sacrament of lufe and concorde, se that nane of yow with despyte in your herte presume to cum to this blyssit sacrament, bot as ye walde be forgeuin of your synnis and ressaue in vnitie with God, swa aucht ye to forgeue vther. And because ye desyre to prepare your self to ressaue sa precious a gift, raise your hertis to God, and als with grete dolour praye him

in Jesus Christis name and for the merit of his Blyssit Passioun, to mak yow worthy be his grace thairto. For and ye ressaue the samyn vnworthelie, it wyll be to your damnatioun. And because cursing cuttis and deuydis the cursit fra the haly congregatioun off the Kirk of God, and deidly syn makis man vnabyll to ressaue worthelie this blyssit sacrament, heirfor I praye yow, and als earnestlye in Jesus Christis behalfe and name chargis, that nane off yow knowing hym self cursit, or in stait of deidly syn, or nocht confessit to his curate or vther preiste hauyng power thairto, according to the law of God and Haly Kirk, presume to cum to this haly and maist excellent sacrament of our Saluour Jesus.

To the Clergye.

Ye vicaris, curatis, and vtheris preistis that ar employit in the ministratioun of the blyssit sacrament of the altare, witt ye that the Prouinciale Counsale straitlye chargis yow, that ye minister the blyssit sacrament mair godlie, mair honestlie, and with gretare reuerence than ye war wount to do. Thole nocht your parrochianaris to cum to this blyssit sacrament misordourlie. But put thame in ordour be your ministeris before the altare, and requyre tham to heir yow reid the afore wryttin exhortatioun, without noysse or din, and to sit styll swa in deuotioun, with deuote hert and mynde, quhill they be ordourlie seruit of the saide blyssit sacrament, etc.<sup>1</sup>

Finis.

(Extracted from the Books of the Acts and Statutes of the aforesaid Provincial Council: by me the undersigned, clerk and notary of the said council.

Andrew Oliphant with his  
own hand signed under  
mandate.<sup>2</sup>)

<sup>1</sup> *Breaid* is probably a slip for *breid* or *brade*; *coniunit*, conjoined; *ekit*, added; *glore*, glory; *als*, also; *attoure*, out-ower, moreover; *unit*, united; *tholit*, endured; and *ye ressaue*, an ye receive, if ye receive; *cursing*, excommunication; *ministers*, here church-officers, parish clerks, or attendants; *swa*, so; *quhill*, while, *i.e.* until. The note at the end alone was in Latin.

<sup>2</sup> The note within parentheses is translated from the Latin of Andro Oliphant, whose name is again Latinised *Elephantus*, as above at p. 88. 'Under mandate' is 'by official authority.' Maister Andro Oliphant, specially active in



heresy trials, was by Knox regarded as a conspicuous 'servant of Sathan.' He assisted, at Glasgow, in 1539, at the trial for heresy of the young Cordelier Jerome Russell and of Kennedy 'who passed not xvijj yearis of aige, one of excellent injyne in Scottish poesye'; both were convicted and burnt at the stake. He was professionally engaged in the Borthwick heresy case in 1540. At the trial of the venerable priest Walter Myln or Mill, in which Sub-Prior Wynram, Greyson, Provincial of the Dominicans, and Provost William Cranstoun, who are also named together as members of the Council of 1549 (see above, pp. 86, 87), took part, Oliphant was the chief accuser or prosecutor; and Myln, eighty-two years of age, was burnt at St. Andrews in April 1558, the last of the Protestant martyrs. Oliphant was more than once at Rome as the confidential agent of Cardinal Beaton and of Archbishop Hamilton. (See Laing's edition of Knox's *History of the Reformation*, vol. i. pp. 44, 64, 552-3; *Register of the St. Andrews Kirk Session*, vol. i. p. 90.)

## APPENDIX I

[To the second volume of the *Statuta*, containing the Latin text of the Statutes, Dr. Robertson appended a series of documents other than statutes, concerning ecclesiastical matters in Scotland. These he called simply 'Appendix.' But as during the progress of the work another interesting series of documents attracted Dr. Robertson's notice—most of them after the rest of the work was printed—he subjoined these to the learned Preface which occupies the greater part of the first volume of the *Statuta*. Hence this second appendix was called the 'Appendix to the Preface.' While for facility of reference the translator was obviously bound to adhere to Dr. Robertson's arrangement of the materials, the distinction between 'Appendix' and 'Appendix to the Preface' would apart from that Preface have been puzzling; the simplest way of indicating the two in the translation was manifestly to call them respectively Appendix I. and Appendix II. Accordingly it will be understood that the documents in Appendix II. are not to be supposed posterior in date to those in Appendix I.; indeed some of the documents in each of the Appendixes are much earlier in date than the earliest of the Statutes themselves.]

### I. Here begin the Canons of Adomnan.

[There is no sufficient evidence for associating these canons directly with St. Adamnan or Adomnan, ninth abbot of Iona and biographer of Columba: they may have been passed by one of several Irish synods Adamnan attended, in all of which he doubtless exercised much influence. Reeves, whose authority in matters of the Celtic Church both Robertson and Skene so often follow, identified the *Lex Adamnani* with the *Cain Adhammain* ('Tribute of Adamnan'), both being the enactments of a Synod

at Tara in 697 exempting women from being compelled to take part in warfare, enactments that had often to be repeated. (See *Cáin Adamnáin*, an old Irish Treatise on the Law of Adamnan, edited and translated in 'Anecdota Oxoniensia,' by Professor Kuno Meyer, 1905.)

The rules as to clean and unclean foods, carrion, defilement of foods by contact with dogs, cats, weasels, mice, etc., may be found in rich variety in the old Penitentials of Theodore of Canterbury, of Bede, and of Egbert of York, as printed in vol. iii. of Haddan and Stubbs's *Councils*; thus in Egbert's one rule is: *Qui comedit et bibit intinctum a familiare bestia, id est cane vel catto, et scit, c. psalmos cantet vel duos dies jejundet, etc.*

Dr. Robertson took the text of the canons from a Cottonian MS. damaged in the fire of 1731, almost the same as in Martène (*Thes. Nov.* iv.); Haddan and Stubbs (*Councils*, vol. ii. part i. pp. 111-114, 1873) preferred the longer recension given by Wasserschleben (in *Bussordnungen der Abendlündischen Kirche*, 1851), which has twenty canons in all, somewhat differently divided, against nine in the other. Only the eighth in the shorter recension has nothing directly corresponding to it in the longer. While I have followed the recension Dr. Robertson selected, I have adopted in several cases, duly noted, the evidently better readings given, with corrections, from Wasserschleben by Mr. Haddan; and have given in small type at the end of the others the canons omitted in the text.

Robertson's iii. contains Haddan's iii. and iv.; iv. in Robertson corresponds to v. in Haddan; v. and vi. in Robertson to vi. in Haddan; vii. corresponds to the first part of Haddan's vii.; viii. has no statute corresponding to it in Haddan's version; and the last paragraph in Robertson, not numbered, but headed 'Item Adompnanus,' corresponds to xix. and xx. in Haddan.]

I. Sea animals floated ashore, about the death of which we know nothing, may be eaten with a clear conscience, unless they be putrid.

II. Cattle falling over a rock are to be eaten if their blood has been shed; on the other hand, if their bones have been broken but the blood has not escaped out of their bodies, they are to be rejected as if they were carrion.

III. Cattle drowned in water, whose blood remains inside their bodies, are carrion. Cattle caught by wild beasts and

left only half alive should be eaten [only] by brutish men.<sup>1</sup>

iv. An animal smitten<sup>2</sup> by a sudden death but still half alive is carrion even if an ear or other member be cut off.

v. The flesh of pigs that have become gross or fat on carrion is to be rejected like the carrion on which they fatten. But when it has shrunk in again and come back to its original leanness, it may be eaten.

vi. But if on one or two occasions it [the pig] have eaten carrion, after this has passed out of its intestines, it may be eaten with a clear conscience.

<sup>1</sup> *Bestialibus hominibus*. In mediæval Latin *bestialis* is not always unkindly meant, being glossed *rusticus*, *stolidus*; and even in older English *bestial* often meant no more than barbarous, rude, or ignorant. Thus Mandeville: 'Thei weren but bestyalle folk, and diden no thing but kepten bestes.' In this canon the bestial or brutish men provided for were perhaps merely people who kept beasts, and were not particular in such things, or nice in the matter of eating. In Scotland braxy-mutton is still quite acceptable to shepherd folk and their friends, especially in the Highlands; almost any sick sheep being comprehensively regarded as 'braxy,' bled duly, and killed. In Egbert's Penitential *rusticus* is sometimes opposed to *religiosus*. Compare *immundis hominibus* in No. XI. of Haddan and Stubbs. But in No. XVIII. of the longer recension, the *bestiales homines* are also spoken of as *humanae bestiae*, which certainly seems not a little harsh. In the disdain of their religious superiors for the 'bestial men' of Adamnan's code, we may, however, have a survival of the undisguised contempt of the Celtic invaders of Ireland, new comers through Britain, for the 'servile races,' so marked and persistent in Irish history—the contempt of the Aryan immigrants for the non-Aryan aborigines of Erin, whom the Celts subdued but had probably not yet completely assimilated. In that case the 'bestial men,' 'the servile races,' would constitute the substratum—and perhaps the bulk—of the still heathen or imperfectly Christianised nation. At the end of the twelfth century Giraldus Cambrensis reported the existence of many savages in Ireland who had not heard of Christ; and in the same century the great St. Bernard gives a very unflattering account of the Irish Christians themselves (*barbaros*, *spurcos*, etc.). In the seventh century the Christian people of North Britain were 'beastly Picts' in the eyes of the Southrons; according to the Anglo-Norman Robert de Brus, the war of the English against the Scots under King David was a 'war of men against beasts.' And it must be remembered that Adamnan, to whom these canons were attributed, was himself a most remorseless champion of race ascendancy: when King Finachta abolished that Bo-tribute exacted by Ulster from Leinster, which for hundreds of years had drenched Ireland in blood and tears, for this most Christian act Adamnan vituperated the king in a set of rather bloodthirsty verses (see Reeves's introduction to Adamnan's *Columba*, 1874 edition, pp. cliv, clv).

<sup>2</sup> I have preferred Haddan's *subita morte praeraptum* to Robertson's *subita in morte praeparatum*.

VII. Pigs that have eaten man's flesh or drunk man's blood are always unlawful food. For in the law<sup>1</sup> a horned animal is unlawful if it have slain a man.

VIII. If a horse or ox gore a man in the land of his township, it shall pay half an ounce [of silver] therefor to the man whose blood has been shed. If a man injure an animal on his own land, no payment is made for it.

#### FURTHER ADOMNAN.

In like manner he forbade to be eaten the marrow of the bones of deer that wolves had devoured. Likewise he forbade to be eaten deer whose blood we see to have escaped from their veins through their legs being broken in traps; declaring [them] to be carrion, inasmuch as the upper blood, which is the cherisher and seat of the life, had not flowed out, but was coagulated within the flesh; because although the uttermost part of the blood had been let out through some extremity of the body, yet the richer and more solid blood, in which the life had dwelt, remains coagulated in the flesh. Accordingly unless the fact of a deep wound<sup>2</sup> [?] has affected the seat of the life of the wounded animal, it is not a case of the pouring out of the blood, but of an injury only to an extremity; so that whoever has eaten that flesh, let him know that he has eaten the flesh with the blood; since God has forbidden this, no boiling of the flesh but only the pouring out of the blood [would have rendered it fit for food]. And the prescription [must] be understood of cattle which have died in extreme sickness, after an ear has been cut off or merely slit up. But the fat and the skin we shall keep for various purposes.

<sup>1</sup> Exodus xxi. 28-36. Haddan adds here two lines more, as follows: *Quanto magis, quae manducant hominem. Foetus tamen eorum observandi sunt. Linquite quos mogitum immunditia non polluit.* This I venture thus to translate: 'How much more such as have eaten man. But the offspring of these, which the uncleanness of the [adult] cattle has not polluted, may be lawfully used as food.' The last clause is manifestly corrupt: to get the sense given I take *linquite*, as has been suggested in Haddan's notes, to be for *licite*, and connect it with the preceding clause. And, on my own responsibility, I take *mogitum* to be for *mugitorum*, 'of the bellowers,' i.e. of the cattle.

<sup>2</sup> Robertson following Martène has *causa vulneris inlissi*; Haddan *crasa ulneris inlissi*.



The sections VIII.-XVIII. inclusive in the longer recension are as follows :—

VIII. Fowls that have tasted the flesh or blood of a man are eminently unclean, and their eggs are unclean ; but their chickens may be used.

IX. A well in which the dead body of a man or a dog has been found, or of any animal, is first of all to be emptied, and its earthy sediment, as being that which the water of the well has moistened, to be thrown out, and then it is clean.

X. Food that has been affected by a cow's touch is to be taken with a clear conscience ; for why should we condemn a thing for having been touched by a cow, as we do not reject milk though tasted by a calf that had earlier sucked [the udder from which it is drawn] ; but on account of the weak consciences of the brethren, not on account of its impurity, let it be cooked, and then it may be eaten by everybody. [The second clause of this canon is impossible Latin : *ut si quis enim* I have ventured to read *numquid enim*. The same ultimate sense would be got by reading *ut siquidem* and translating 'as if we should condemn . . . and [yet] do not.' *Intinctum* is properly something that has been dipped into or steeped in something else, like meat in pickle or cabbage in vinegar. Here it obviously means, generally, human food into which an animal has put its mouth ; the food being thereby rendered unfit for human food if the animal be an unclean animal—though obviously it is the cow's nose that is *intinctum* into the porridge and not the porridge that is *intinctum a vacca*. But 'defiled by contact' other than dipping is obviously the sense in XVIII. of this series—*quam bestia dentibus intinxerit* : the sense of *tango* or *contingo* having prevailed over that of *tinguo*.]

XI. That which has been affected by the contact of pigs must be cooked and given to such unclean men. For pigs eat things clean and unclean, whereas cows are fed on nothing but herbs and leaves of trees.

XII. What has been defiled by a crow cannot be purified by any kind of cooking, on account of our doubtful suspicions. For which of us knows what unlawful food it had eaten before touching [that in question] ?

XIII. What has been defiled by a weasel must on no account be eaten either without cooking or after cooking.

XIV. Animals drowned in water are not to be eaten, since God forbade flesh with the blood in it to be eaten. For in the flesh of an animal strangled in water the blood remains coagulated. This God forbids, not because in these times men would eat raw flesh, since in that condition it is no sweeter to the taste, but because they would have eaten flesh which had been strangled and so was carrion. And the law [ . . . ? . . . ] saith : Ye shall not eat of anything that dieth of itself. [In the end of Haddan XIV. occurs the strange phrase, *Lex metrica ratione scriptura*, with a suggestion that *scriptura* may be for *scripta*, so that the whole might be rendered 'the law written in metrical fashion,' and refer to some versified form of the Mosaic law. But as the text is certainly corrupt in any case, it seems to me more likely that the mysterious phrase originally referred simply to the *Lex Mosaiica*, *Levistica*, or *Deuteronomica*, passages bearing on the subject being found in Leviticus xxii. 8 and Deuteronomy xiv. 21, and *scriptura* being in some way epexegetical of the preceding phrase.]

XV. Cattle taken by theft are not to be accepted by Christians either in the way of trade or by way of gift ; for this he [Adamnan ?] forbids, that the soldier of Christ should accept anything [of the kind] ; for the breath of a robber destroys every courtesy that it touches [*fletus* for *status*].

XVI. Of the wife who becomes a harlot he thus laid down the law : that she will be a harlot who, throwing off the yoke of her own husband, forms a union with a second or third husband, if her proper husband takes no second wife in her lifetime, since we cannot be sure that she was fortified with the justification we read of in Roman law cases, whether [her case was settled] by suitable witnesses, or false ones.

XVII. The same authority affirms that flesh which has been [partially] eaten by wild animals is unclean, not as being carrion, but because the blood of that flesh [thus] forbidden was shed by wild beasts.

XVIII. An animal which has only been wounded by a deadly bite but not completely killed should be eaten [only] by persons in a state of sin and brutish men, that portion, however, being cut off and given to the dogs which the wild beast had actually touched with its teeth. For it seems suitable that human beasts should eat the flesh that had been made over to beasts.

## II. Synod of North Wales.

[After the Canons of Adamnan and before the extracts from the decretals, Dr. Robertson printed four canons headed *Incipit nunc synodus Aquilonalis Britanniae*, thinking it just possible that they concerned North Britain in our sense of the word. But as they have now by general consent found their place in the series of councils of North Wales, and been printed as such by Haddan and Stubbs, it seems unnecessary to deal with them as if they in any way concerned the Scottish Church.

More relevant to the Celtic Church in Scotland are the thirty-four canons attributed to St. Patrick and others, headed *Incipit Sinodus Episcoporum*, and printed by Haddan and Stubbs in the *Councils* (vol. ii. part ii. p. 328), which Mr. Haddan thinks may be of the eighth century. There, too, will be found (pp. 331-338) some single canons and the canons of a Second Synod, also attributed to St. Patrick. And Haddan thinks that while some of the ecclesiastical laws of the *Senchus Mor* or Kain Patrick date from the ninth or tenth centuries, some of them may have been drawn up at Tara in 566, certain of them perhaps by Patrick himself. The *Regula Choluim Cille* or Rule of St. Columba (*Councils*, vol. ii. part i. pp. 119-121)

cannot well be derived from Columba himself or from any synod in which he took part; Mr. Haddan thinks it 'the production of some later Columbite monk or hermit.'

Haddan and Stubbs regard the canons of the *Synodus Aquilonalis Britanniae* as the outcome of the first of two Synods of St. David, held shortly before 569 A.D. at Llandewi Brefi in Cardigan, near the Roman station of Loventium. They obviously concern monastic discipline. Robertson, following Martène, arranges the canons as four in number; Haddan and Stubbs, following the Paris MS. as printed by Wasserschleben, divide them into seven (see *Councils*, vol. i. pp. 116, 117). The text is substantially the same and may be translated thus, following Robertson's text:—

I. If any [cleric] sins with woman or with man, let him be expelled so that he shall live in a monastery of another country; and having made confession, let him do penance for three years in seclusion; and afterwards let him serve as a brother, subject to the altar in that country, one year if [he was] a deacon, three if a priest, four if a bishop or abbot; let each, deprived of his orders, do penance by the judgment of a doctor.

II. Whosoever has polluted himself, let him do penance in seclusion for a year; if a boy of twelve years, two or three periods of forty days [each]; if a deacon, one year in seclusion and half a year with the brethren; if a priest, one year in seclusion and another with the brethren.

III. Let a monk who has stolen consecrated things do penance for a year in exile and another with the brethren. But if he repeat [the offence], let him suffer exile [permanently]. He that has stolen food, let him do penance forty days; if [he does it] a second time, three times forty days; if a third time, a year; if a fourth time, let him do penance in exile under the discipline of another abbot [than his own].

IV. Let the informed-upon and the informer be judged on the very same footing [*consimili persona*]. If the informed-upon denies [the offence], let him do penance two days a week on the same diet of bread and water, and for two days [extra] at the end of each month, all the brethren imposing and invoking God as judge upon them. But if they continue obstinate [in their denial and affirmation], then, after the lapse of a year, let them be attached to the brotherhood of another [abbot] under a rigorous judge [in *sub iudice flamma*, read *flammeo* for *flamma*], and let them be left to the judgment of God. But if ever either of them confesses, let there be imposed on him manifold the trouble he has inflicted on the other.]

III. Chapters<sup>1</sup> containing rescripts about Scottish causes from amongst the decretals collected by command of Pope Gregory ix. about the year 1234. [XIIIth and XIVth centuries.]

Book I. title xliii: Concerning arbiters. Chap. 6: An arbiter has no power of deciding beyond the matters contained in the submission: therefore before an arbiter there is no jurisdiction by reconvention.

[A.D. 1208] Pope Innocent III. to the Bishop of St. Andrews, to the Abbot of Aberbrothoc, to Thomas the prior, Ranulf the archdeacon, and Master Laurence, official of St. Andrews. . . . That although he who is convened in a court of law may by reconvention summon before the court the party who convened him, yet there is no right of reconvention before arbiters; seeing that arbiters have no power to pronounce judgment unless on matters with regard to which a submission has been made to them.

Book II. title xii: Concerning the case of possession and property. Chap. 6: If the cause to which an action refers is at once petitory and possessory, it is ended by a single decree and the possessory takes priority in ending the decree, but the petitory has the first place in the execution.

[A.D. 1198-1216.] Pope Innocent III. to the Bishop of St. Andrews, the Abbot of Aberbrothoc, Thomas the prior, Ranulf the archdeacon, and Master Laurence, the official of St. Andrews. . . . That when an action refers at one and the same time to a possessory and petitory question, both the one and the other should be ended by a single decree. But although in the pronouncement of the decree possession should have the prior place, yet in execution property ought to take precedence.

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<sup>1</sup> *Capitula*—the term used in the canon law even when, as in some of the 'chapters' reproduced here, only the essential passages are excerpted in a sentence or two.

Book II. title xxii: Concerning the faith to be attached to deeds. Chap. 9: Deeds may be produced after public attestation up to the conclusion of the cause: local custom makes a deed valid.

[A.D. 1206.] Pope Innocent III. to the Bishop of St. Andrews, the Abbot of Aberbrothoc, Thomas the prior, Ranulf the archdeacon, and Master [Laurence] the official of St. Andrews. . . . To the second question, however, we have held that the reply should be as follows: That both parties may produce a deed after the names of the witnesses are disclosed, even down to the settlement of a final judgment, before a conclusion has been come to in the cause. With regard to the third article, again our answer is that you make careful inquiry into the facts, and if an approved custom in that country exists to the effect that faith attaches to the deeds of that king, you may freely admit them, especially seeing that the said king was a man of so high honour that his deeds are of the greatest authority in the country of Scotland.

Book II. title xxviii: Concerning appeals, etc. Chap. 64: An appellant who fixes beforehand the termination of his appeal—if he sends a procurator only to make his claim and to reply to his opponent, and the appeal has been admitted by the judge or approved in part—is found liable in expenses to an adversary who conducts his case in a lawful way.

[A.D. 1224.] Pope Honorius III. to the archdeacons of St. Andrews and Dunkeld and to Master John, Canon of Dunkeld. . . . We have appointed our beloved brother, the Cardinal-Deacon of St. Hadrians, to hear the case between the Knight Nicolas and Brother E., monk of the monastery of St. Mary of Dundrennan, of the Cistercian order, and in the diocese of Whithorn, both here before the holy see. In whose presence, as the said monk had been appointed procurator only for the purpose of stating a claim and contradicting, as clearly appears from the letters of the said abbot and convent, the said knight humbly craved that we should proceed against them as contumacious. . . . As, however, we were not fully



satisfied in the premises with regard to the assent of the said knight and monks, we remit to your discretion that if you are satisfied that the said abbot and convent have fixed beforehand a termination to their appeal, since they have not sent a procurator adequate to carry it out, the knight before mentioned conducting the same personally, you find them liable to repay expenses to the said knight from the time when the appeal was taken; and, he having been restored in the first instance, as was just, that you hear the cause, and, disregarding the appeal, bring [the case] to a proper termination.

Book III. title xxiv: Concerning donations. Chap. 6: In donations there should be a very liberal interpretation; and on this account a clause imposing burdens coming after a number of gifts has reference only to the gift last mentioned.

[A.D. 1208.] Pope Innocent III. to R., Abbot of Jedburgh, and G., of Dryburgh, and to Master I., rector of the church of Bilchiale.<sup>1</sup> . . . As our beloved sons, the abbots and monks of

<sup>1</sup> The story of the dispute about tithes between the abbot of Cambuskenneth and the abbot of Dunfermline that gave rise to this brief opinion is given at length in the *Corpus Juris Canonici*. Friedberg, in the edition 1879-81, dates the decretal 1207; and for the 'Aberbrothoc of the heading' gives nearly a dozen *variae lectiones* from *Aberbruhot* to as unlikely forms as *Beroth*, *Bethoth*, and *Beco*. The next excerpt gives *Beroth* as an additional form: the third adds *Broch*, *Beruth*, *Bruich*, and several others: showing how puzzling Scots names in Scots script proved to the Roman clerks who had to decipher them for the Vatican. The date of this third excerpt Friedberg puts also at 1207: but as only so much of the decretal is printed as Robertson gives, no light is afforded as to who was the *supradictus rex* of the instrument in question.

The fifth excerpt is dated 1204 by Friedberg: and his *variae lectiones* for the improbable Bilchiale are the yet more unlikely forms *Biltale*, *Bistale*, and *Bucul*. In the footnotes to Friedberg's edition of the *Corpus Juris Canonici* appears also *Lilleshae*, a more feasible form certainly and probably a rationalising conjecture, which the editor completes by identifying *Lilleshae* with what he prints *Lillieslaff*. But of some five-and-twenty spellings of the name of Lilliesleaf in the *Origines Parochiales* differing as widely as *Lillescliva*, *Lilleschiue*, *Lilsly*, the form *Lilleshae* is not one. Further, from before 1170 until the middle of the fourteenth century, the church of Lilliesleaf was a mensal church of the bishops of Glasgow—its principal revenues being appropriated to the bishop for the maintenance of his table—and the clergyman in possession would usually at least be rather a chaplain than a rector. But the *Origines Parochiales*

Melrose, have stated in our presence that a nobleman, Alan, is desirous with a high hand to reduce to forest certain lands which were gifted in mortmain by his late father, Walter, to their church of Mauchline, . . . we order you, relying on our authority, to disregard the appeal and to proceed to pronounce judgment in favour of the monastery . . . since it is plain from the tenor of the deed that the mind and intention of the testator was that the clause of forestry occurring at the end of the deed must, according to a sound construction, be referred, not to the earlier gift (which was unrestricted and unqualified enough to be unchallengeable and to be outwith the secular usage), but to the later grant, which contains a clause prescribing a fixed payment; because in contracts a liberal construction is to be applied, in testaments a more liberal, and in deeds of free gift, the most liberal of all.

Book III. title xxiv: Concerning donations. Chap. 9: The donation of a fiftieth or a hundredth which a bishop makes to the serious loss of his church may be revoked; nor can he make over, without the authority of his superiors, more than the fiftieth or hundredth part, even though there be no injury to the church.

[A.D. 1211.] Pope Innocent III. to the Bishop of St. Andrews. . . . Since it often happens that bishops by a series of grants confer on religious houses more than the fiftieth portion of the rents that belong to them, so that sometimes those rents are diminished by a third or a fourth, or occasionally somewhat more or less, your fraternity hath consulted us whether the successors of these bishops may in some way revoke grants that have been made in this manner

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record that at the period represented, apparently, charters are signed by parsons, chaplains, and rectors of Lilliesleaf.

On the other hand, I am assured by a friend in the Register House, skilled in the palæography of Scottish place-names, that Bilchiale is an extremely possible or even probable misreading of what would be the contemporary way of writing the Scots name *Boithuille*, one of many ways (*Bothwile*, *Bothvile*, *Botheuill*) of spelling Bothwell. And the church of Bothwell, transformed in 1398 into a collegiate church of the Earl of Douglas, was till that date undoubtedly a free rectory. Bilchiale is probably an unhappy effort of an Italian cleric to decipher the old spelling of Bothwell.

exceeding the fiftieth part. Accordingly we reply to your query thus: Although in canon law it is specified that if any bishop desires perhaps to found a monastery in his diocese, and to endow it from the funds of the church over which he presides, he may not in that connection alienate more than the fiftieth part of the income of the church he governs, but not more than a hundredth part for the purpose of reorganising a church according to monastic rules, or of conferring distinction on the church selected as his place of sepulture; yet inasmuch as it is added further on in the same canon, in order that this justness of proportion should be maintained, that, while he must not inflict severe loss on that from which he takes, he shall confer a sufficient subsidy on that to which he gives, this precaution being further observed that he may undertake one only—whichever he pleases—of these two modes of endowment; this must always be kept in view that neither one bishop nor another must give more nor yet as much nor even less [than the specified proportions] if it is to be to the serious injury of his own church, whether he be disposed to make his grant once and for all or at several times in succession either to the same or to various churches. Hence when it is proved that grave injury has been inflicted either to the property or to the income appertaining to the episcopal table or cathedral, in whatever proportion it be proved that the grant has been made, it may lawfully be revoked; unless by prescription or some other obstacle lawful action in this direction be excluded. For although at first sight it may be presumed that the alienation of a fiftieth or a hundredth part cannot inflict serious loss, yet since it may in the interim be discovered from various circumstances to be seriously injurious, not only if it be repeatedly done, but even if done once only—a thing that can be ascertained rather by proof of the fact than from the wording of any statute; neither a fiftieth nor a hundredth portion is to be alienated, once or repeatedly, to the grave injury of a church. But if a bishop is so exceptionally well off that without injury to his own church he can contribute to the necessity of another church in a proportion larger than a fiftieth or a hundredth; although of his own authority he must not go beyond the

sum specified in a canon meant to check those who would bestow inconsiderately, yet by the authority of the superior pontiff<sup>1</sup> he may supply another's lack in a larger sum.

Book III. title xxx: Of tithes, firstfruits, and offerings.

Chap. 8: Those who are privileged in respect of not paying tithes are yet held bound to pay tithes on estates leased by them from others.

[A.D. 1180.] Pope Alexander III. to the monks of Newbattle. . . . Our beloved sons, the abbot and brothers of Holyrood, have in a complaint by them to us shown that you have rented and taken on lease from a great number of lay persons estates whence they were in use to draw tithes and a great part of their income. Wherefore since these same brethren are thereby put to an amount of loss excessive and contrary to rule, and since it was never our intention or that of our predecessors that ye should not pay tithes on lands [merely] farmed by you, we direct and command your society to pay to them in full upon the fruits of the lands which ye have leased in their parishes, or make with them such peaceful and amicable composition that no scandalous ill-will need be bred between you, and that ye may not seem to be stretching your hands further than ye are privileged to do.

Book III. title xlix: Of the right of sanctuary afforded by churches, the churchyard, and the parts pertaining to them. Chap. 6: A man accused of crime who flees to a church is not to be dragged thence by force, nor must he thereafter be condemned to death or to any other bodily punishment [*i.e.* in life or limb] on the score of the offence he has committed; but he is otherwise to be lawfully punished. The case falls under two heads here defined. A serf fleeing to a church from fear of his master is to be restored to his master

<sup>1</sup> *De superioris auctoritate pontificis.* The superior pontiff could only be the supreme pontiff, the Pope; as there was no archbishop or superior bishop over the Bishop of St. Andrews at this date; the Scottish Church having in 1188 been finally declared to be immediately dependent on the Pope.

after he has sworn not to punish him [in life or limb].

[A.D. 1200.] Pope Innocent III. to the illustrious King of Scotland. . . . Amongst other matters set before us by your royal foresight was the earnest request for advice as to what ought to be done with those who, having committed offences, flee to churches in order that, through reverence for the sacred place, they may escape the penalty they have incurred. Replying therefore to your questions in accordance with the prescriptions of the sacred canons and the teaching of the civil laws, we have decided that in such cases a distinction must be made according as the person who flees to the church is a free man or a serf. If he be a free man, he must not be dragged out of the church, however great be the crimes he may have committed, nor must he be condemned [to be taken] thence to death or corporal punishment; but the rectors of the churches should, as a concession to themselves, obtain security for his limbs and life. But as to the offence he has committed, he is otherwise to be punished lawfully; and this holds good unless he be a highway robber or a plunderer of fields by night, who, since he haunts the highways and obstructs the public roads by his insidious attacks, may according to the canonical determinations be haled forth of the church, without any sanctuary being afforded to him. If, on the other hand, he be a serf who has fled to the church, he is—after his master has made oath to the clergy that he will not punish him [in life or limb]—to be compelled to return to his master's service, even against his will; otherwise his master may take possession of him. Do you therefore, very dear son, see to it that when in the kingdom any such case occurs you proceed according to the distinction hereinabove drawn, that the honour and immunity of churches may be preserved intact and occasion of evil speaking be taken away from men of a perverse disposition.

Book IV. title XX : Of settlements between husband and wife, and of the dowry which is to be restored after divorce.  
Chap. 6: A liferenter bestowing what he thus possesses on his wife as marriage settlement without the consent



of the lord of the manor cannot transfer to her greater rights than he himself possessed; and the same holds good as to the man who holds property by inheritance or in feu under some limiting condition.

[A.D. 1203.] Pope Innocent III. to the Archdeacon of St. Andrews in Scotland. . . . Your discretion has lately inquired of us, if an estate have been given to somebody not in inheritance or in fee but only to be held by him for his lifetime, and if he afterward settled a third part of the same as dowry on his wife, whether when the husband dies the wife ought to have and to hold the said dowry for her lifetime, since the church is bound to protect the dowries of widows. You have furthermore desired to be instructed by letter from us, if an estate have been granted heritably and in fee to a man and his heir procreated from his lawful wife, and if the man, having granted part of the same to his wife as dowry, have thereafter died without offspring, whether the wife ought to hold that dowry of right, and whether further the church should in this case make a stand on her behalf, or whether, on the death of the husband, such estate should without more ado return into the possession of him who originally granted it. We therefore to your question make this reply: Since in regular course no one can transfer to another fuller rights than he is himself shown to possess, a man to whom an estate has been granted on the foresaid conditions cannot bequeath to his wife what he has no claim to possess save for his lifetime, nor can his wife hold a part of the land by grant of her husband as a marriage settlement; unless indeed he to whom the lordship of that estate belongs has been pleased to consent to the settlement in question. What we have said as to the first inquiry, the same we reply as to the second. For although the church ought to show itself favourable in the case of widows, yet the favour of the church must not be extended to them contrary to justice. Furthermore we would not have you forget that according to legal definitions a wife is said to bring her husband a dowry, whereas the man is said to make his wife a marriage settlement.

IV. Chapters<sup>1</sup> of the chancery<sup>2</sup> of the King of Scotland as well for letters in connection with pleading courts as for brieves to be issued by the king from the chancery concerning things ecclesiastical. [XIIIth century.]

Chap. LXIII. An inhibitory letter of our lord the king on behalf of a man vexatiously haled before a court of Christianity.<sup>3</sup>

The king to the bishop of N. or the archdeacon, dean, or their official, greeting. A. has in a grievous complaint set before us that P. is unjustly forcing him to plead before you in a court of Christianity about the lay tenement of N. which he holds of us in chief or by charter, the cognisance of which class of causes ought by right to pertain to our royal court. Wherefore we issue an order, and, if the matter stands as the said A. has declared to us, strictly inhibit you from proceeding in the said cause to the prejudice of our royal dignity, inasmuch as our court was not awanting to P., to do him justice; so that it may not be the duty of the said A. to have recourse to us in respect of your misdemeanour and disregard of our prohibition, making just complaint such that we may be compelled to take serious measures bearing on you and your property or to apply other remedy. Witness etc.

<sup>1</sup> *Capitula*—the several formulas, though complete each in itself, being treated as chapters, sections, or headings in the book from which they are copied—in this case the Ayr MS. (see Dr. Robertson's Preface, cxcix).

<sup>2</sup> *Capella*.

<sup>3</sup> *Curia christianitatis*, an ecclesiastical court, as 'christianitas' was used for the body of the clergy. Famous English statutes restricted and treatises discussed the functions of the 'Courts Christian.' Latterly the term was specially reserved in usage for the courts of the rural deans, who were hence called 'deans of Christianity.' *Christianitas* was even used *simpliciter* for a deanery-christian or rural deanery: the Archbishop of St. Andrews issued mandates to *decano christianitatis nostrae de L.* (cf. Statute 256 above, and Appendix II., Nos. xxiv., xxvi., xxviii., xxix.) and *magistro N. dictae nostrae christianitatis de H. decano* (xxix.). We have also *infra dictam nostram christianitatem et decanatum de H.* (xxix.). So one of Holinshed's continuators speaks of the nineteen churches of Exeter and its suburbs as 'called by the name of the christianitie euen to this daie.'

Or thus: The complaint etc., that you are haling him before So-and-So in his court (as above). Wherefore we command you on the faith and loyalty in which you are bound to us, and straitly enjoin you utterly to desist (if the matter stand so) from the said cause, which is to the prejudice of our royal dignity, etc.

Chap. LXVII. In respect of the king and the general council.

The king to the venerable fathers in Christ, all and several the bishops by the grace of God of our realm of Scotland, and to the other inferior prelates assembled in the general council to be held at Perth in the church of the Friars Preachers, on the morrow after the day of St. P. next to come, greeting. Know ye that by these presents we make and appoint B. and C., who are both professors of civil law and our faithful subjects, to be our lawful procurators; giving them jointly and severally full powers and a special mandate to expound and set forth in the council ye are about to hold the matters we have instructed them to declare to you as well on our behalf and the estate of our kingdom as on behalf of your estate and that of the Scottish church. And especially to make protest, and if need be appeal against anything being decreed by you in the said council which may be turned to the prejudice of our royal majesty. And we hold and will hold approved and acceptable whatever may be done on the points in question by our said procurators or any one of them before you on the said day and in the said place.

Chap. LXX. A letter of compulsitor on behalf of ecclesiastical rights.<sup>1</sup>

The king to the justiciars, sheriffs, provosts, and their bailies and all his other faithful subjects, to whose knowledge these

<sup>1</sup> This letter is, save in two or three clauses, verbatim the same as the 'Compulsio pro Personis ecclesiasticis,' the first document in Appendix II., the same being more fully worded or written out, thus to *ballivis* is added *ceterisque ministris*. *Fideles nostros* of the one is epexegetically completed: *tales abbatem et monachos seu canonicos talis monasterii seu ecclesiae* in the other. *Set potius* of one is *ymmo potius* in the other. In the second the hypothetical bishop of the first is referred to as Bishop of Brechin; and one attorney only is suggested. The *omnes et singulos infra ballias vestras* of the second has been omitted (likely by oversight) from the first, so that the completion in the first—

presents, etc. To you all collectively we by the tenor of these presents declare that when we have to any extent whatever infefted our faithful subjects with lands and revenues it is not the scope of our design to subtract, diminish, or take away aught of the lands or revenues, kains<sup>1</sup> or annual dues piously bestowed on God and the church and on ecclesiastical persons by us or our predecessors the kings of Scotland or any other persons in our kingdom. But rather we desire that such infeftments made or in future to be made by us shall thereafter inflict no disadvantage on God and the church or on ecclesiastical persons, so as to prevent them from enjoying as they were wont the lands, revenues, kains, and annual dues, together with arrears from any terms that may be overpast. Wherefore we command and enjoin on all of you that, when ye are required so to do by the venerable father by the grace of God bishop of A. or his attorneys, ye shall compel to appear before you according to justice as well those infefted by us (as is above described) as other lords of lands or tenants who refuse to pay to the said bishop rents, returns, kains, or annual dues, with the above-mentioned arrears, according as the said bishop or his attorneys may be able to give reasonable proof that the said rents, etc., with the same arrears are owing to him (or them). So that in event of your failing etc.

Chap. LXXVII. Letter of inhibition in the case of a monastery too heavily oppressed.

The king to all, etc., to whom, etc. Know ye that since the

*tam per nos infeodatos ut supradictum est quam alios terrarum dominos vel tenentes*—comes in awkwardly as if it were a continuation of the construction *per venerabilem* and instead of the accusative to the principal verb. And the *a dicto episcopo* of the first (where the *a* makes nonsense) shows that the copyist had before him a fuller form like the second, but having by accident or design omitted *detinent ab eodem* failed to see that the *a dicto episcopo* should have been arranged to suit *solvere dicunt* and be in the dative. The *et cetera* of the first (after *firmas*) is in the second *canos vel census annuos*, and in the second the final formulas are more fully written out. *Compulsitor* (for *compulsator*) is, though etymologically indefensible, the accepted Scots law term for a compulsory document such as this.

<sup>1</sup> *Kain, Cain, or Cane*, is one of the very few Celtic words (*Cáin*) that were adopted into Church Latin (in the form *Canus* or simply *Can*) as well as into lowland Scots (e.g. Burns's 'Twa Dogs') for rent paid in kind, latterly especially or solely in poultry.

monastery of A., the right of patronage in which is recognised to pertain to us, is, as we have been given to understand, falling into poverty by reason of the too great numbers of outsiders who crowd in; for their [*i.e.* the monks] assistance, support, and relief, we, on our part, according to the wonted custom of our realm, appoint A. de L. guardian of its [*i.e.* the monastery's] gates, in order that, on pain of complete forfeiture at our hands, none be received there save such religious and poor persons as the abbot and chapter shall judge proper to be admitted. By these presents, etc.

Chap. LXXIX. A letter of the king making a grant of land to a bishop in compensation for losses inflicted on him.

The king, to all, etc. Since the venerable father J., by the grace of God bishop of A., has absolved us and our men from all sentence of excommunication—if any such we have incurred—all manner of loss, injury, or grievance inflicted by our men in time of war on himself and his above-named church, its lands held in alms, and the dwellers in the same having been by him remitted as well to us as to our men of all ranks; we, in compensation for the losses, perils, and grievances inflicted, do of special grace grant and concede by these presents to the aforesaid bishop the whole estate of F., with its just pertinents and all the goods [and] produce accruing from the said land that may be found on it; desiring and granting with a pure heart that when it shall have befallen himself to endure the lot of humanity,<sup>1</sup> the relations and friends of the said bishop shall have, hold, and possess the said land and its produce, rents, and returns, and shall, after the death of the bishop, convert them to such uses as it can be proved that the said bishop in his lifetime arranged in detail should be done with the said lands and produce; whose disposition we hold ratified from this time on, and desire that it shall be held ratified until the bishop his successor shall have, according to the laws and customs of the realm, taken the oath of fealty to us or our heirs. Wherefore we straitly command that no one shall in future times presume in any respect to contravene this our grant. In witness whereof, etc.

<sup>1</sup> To endure the lot of humanity (*humanitus contingere*), to die.



## V. Mandate of the bishops of the kingdom of Scotland.

To all the sons of the holy mother church who shall see or hear these presents, David and Albinus, by the grace of God bishops of St. Andrews and Brechin, and Master Abel, chaplain of our lord the Pope and Archdeacon of St. Andrews, wish eternal well-being in the Lord. We have inspected a mandate of the bishops of the realm of Scotland to the following effect: To their most excellent lord A., by the grace of God the illustrious King of Scotland: David, William, Peter, Clement, Albinus, Robert, William, ministers of the churches of St. Andrews, Glasgow, Aberdeen, Dunblane, Brechin, Ross, and Caithness, respectively send greeting and their ever faithful and devoted service. Although the rules ordained in the last council [of the kingdom] holden at Edinburgh in the presence of you and your magnates have not at all been reduced to writing, yet we cannot believe that these have escaped the memory of your councillors: namely, that the churches and their prelates should enjoy the peaceful possession of all those rights and liberties which they have received in the time of King Alexander, your father, of happy memory, your [royal] right and possession being in all cases reserved. Yet now something new and from of old unheard of in the realm of Scotland has been brought in by your councillors: to wit, that ecclesiastical persons should, without the intervention of any judicial cognition on the part of their prelates, be despoiled by laymen of the possessions bestowed on their churches in alms, as we understand has lately occurred in the case of the Prior of St. Andrews. Now since these and the like of these attempts against God and the freedom of the church should not be allowed to take place without attention being called to them, we humbly and devotedly petition your excellency to revoke under the decision already come to whatever has irreverently and inconsiderately been done in the case of the goods of the Prior of St. Andrews, and, if it please you, not to permit such things to be done in future. Otherwise we shall, at whatever risk to ourselves, rather denounce than be willing to endure what may hereafter turn out to be such an incalcul-

able injury to the church. May your excellency ever prosper in the Lord! In witness whereof we have caused our seals to be affixed to the present document.<sup>1</sup>

# VI. Mandate of Pope Innocent as to the removal of the grievances of the Scottish church.<sup>2</sup>

Innocent [iv.], bishop, etc., to the venerable brethren the bishops of Lincoln, Worcester, and Lichfield, greeting and the apostolical blessing. The church of Scotland cries aloud in our ears and declares itself to have numerous grounds of complaint against those who seem to be ruling the faithful people of Scotland and to have got under their power the heir, as yet a child, of that most Christian king [of Scotland]. And, indeed, there is first a charge levelled against them in [disinterested] charity on behalf of the boy-king and the kingdom; to wit, that they are no good counsellors to the youthful king, new courtiers who—ascending his throne and putting behind

<sup>1</sup> This formula must date from the middle of the thirteenth century, when there was a Bishop David in St. Andrews (David Bernham, 1239-53) and an Albinus (1248-69) in Brechin: as well as bishops in the other sees with the names given. The child king, Alexander III., who acceded to the crown at eight years of age in 1249, is accordingly the king addressed,—doubtless immediately after his accession. Clement, Bishop of Dunblane in 1233-58, seems in some documents to appear as Celestine (see *Acts of Parl.*, i. p. 83; *Cartularium de Levenax*, p. 2). The date is apparently between 1248 and 1253.

<sup>2</sup> This commission was issued by Pope Innocent IV. on May 31st, 1251, and the Bishop of Lincoln nominated by it to act was the famous Robert Grosseteste, who about this date was holding his own with equal energy against king and Pope. In this very year, indeed, he was suspended by the Pope for refusing to institute a criminous clerk; in 1250 he had been to Lyons, whither the Pope had retired from Italy in 1244. The General Council referred to at the end of the commission is not, however, the thirteenth General Council held by Innocent at Lyons, 1245; the *constitutio de duobus dietis* is the 37th canon of the Fourth Lateran Council of 1215, *ne quis episcopus ultra duas dietas extra suam diocesim per litteras apostolicas ad iudicium trahi possit*. The *dieta* or day's journey consisted of a number of leagues, varying in number in various countries—for England it was in the next century ten leagues (*leucas*)—the league being some 1500 paces. In 1251 the child king of Scotland, Alexander III., was but ten years old. His reign was not a peculiarly distressful one either for the country or the church—contrariwise, rather, as we know from the famous old *Cantus* about 'wyne and wax . . . gamyn and glé'; but in the reign of a minor the magnates were always apt to become self-seeking and oppressive.

them the wholesome principles with which his father's affection, while he was yet alive, had prudently supported him—neither manage the kingdom in accordance with justice and judgment nor even maintain it in its integrity, since the same new counsellors, by new schemings and machinations, attack the liberty of the church, which they must clearly be held to infringe who do violence to the power of princes, through which the Catholic faith flourishes and the royal majesty itself is guided.

Amongst other things which the ministers of the kingdom and the lords of territories are said to be trying, under this king of tender age, to the subversion of church power in these parts, now that that king of Scots, of famous memory, is dead, in whom the faith and liberty of the church had a most Christian defender; everybody must see it to be incongruous and absurd, and deserving the censure of both divine and human justice that when the prelates of churches have issued against their subjects for contumacy or offences sentences of excommunication or interdict or suspension, these courtiers should launch against them letters under the king's name commanding them to revoke such sentences, and unless they obey the precept, they are compelled thereto by the sacrilegious confiscation of their goods, as is said to have actually happened to several bishops of that kingdom. And in respect of properties and effects which the pious liberality of devout persons has bestowed so as to be under divine authority, the clergy are dragged, contrary to clerical privilege, before the secular court, and are not listened to when they invoke public laws in their defence; and so by the inequitable procedure of a judge who has no competence in the case, the churches are sometimes despoiled of their property. And furthermore, in the case of certain properties bestowed by laymen on the churches in perpetual alms, on which the donors have reserved to themselves nothing but [their share of the contribution for maintaining] the army for defence of the kingdom and the common aid; these ministers and other laymen supported by their favour, thinking that by this qualification the said properties have been [partially] laicised, treat them as in all respects under the same conditions as the properties of laymen,

and restricting the generosity of the donors to the injury of divine right by a perverse interpretation, subject them to lay servitudes; not considering that (whatever be the case with religious persons) to lay persons no power is attached of interference with religious possessions to impose limitation on ecclesiastical properties of their own rashness against the wish of the owners, and in spite of their express opposition; and in regard to the domains of such persons, of which the churches have for long periods of time been recognised to be in peaceful possession, they sometimes even, following the false evidence of lay persons notoriously hostile to the clergy, pronounce for laymen and against the clergy unjust decisions, which are further followed by violent spoliation. Again as to the right of patronage, hardly anybody is ignorant that it is attached to spiritual interests; but although it has been established by the general custom, a custom in accordance with the law of the said kingdom, that it is an understood thing that this is a matter to be settled by the outcome of an ecclesiastical investigation; yet this too is, with new insults, usurped by laymen, and it has been publicly proclaimed as for the king that when action is to be taken on this head recourse must be had to an extraneous jurisdiction. But who, except a man who does not understand how to look at things from the point of view of sincere faith, could assert that the decision on faith and on oath is other than a spiritual concern? and through the flesh in this matter contumaciously exalting itself over the spirit, in your parts royal missives have begun to be circulated, by which, to the dishonour of the king and the risk of the realm, it is decreed that nobody shall be compelled by ecclesiastical censure to adhere to his oath or his asseveration by his faith.

And although by ancient custom of that kingdom it has been established, and, as consonant with social order,<sup>1</sup> always peacefully observed down to the present time, that prelates should inflict a certain pecuniary penalty for offences that are recognised to pertain to ecclesiastical cognisance, when they have not provided that the delinquents should rather

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<sup>1</sup> *Humane discipline consonum.*

be smitten with the spiritual sword (than which there is no more severe punishment); now the magistrates of the aforesaid kingdom and others endowed with temporal power, desiring to abolish this laudable usage, forbid their subjects to submit to penalties of this kind. Over and above, the too presumptuous and highly to be condemned audacity of these same magnates is extended to things which the authority of divine power has excluded from the right of human jurisdiction, and forbids tithes to be paid to the churches of hay, mills, and pastures. And, if any persons are summoned to trial before ecclesiastical judges in regard to these payments, prohibitory edicts issued in the king's name deter agents from taking the steps to secure divine right and judges from administering to those who demand it justice in that department; nay, quite contrariwise, these same judges are by threat of severe punishment hung over them compelled to revoke the sentences that have been duly passed. Also married clerics<sup>1</sup> in the same kingdom who, wearing the clerical tonsure, were wont to enjoy clerical privileges and with their goods to remain under the ancient security of ecclesiastical protection, are deprived of the benefits of immunity and brought under new burdens of servitude. And lest they should in this seem to have committed an inconsiderable offence against the Scottish church, they have added a by no means venial sin against the Roman church; while they seek as far as in them lies to make void the plenitude of power with which God has endowed the Apostolic See, and to the intolerable injury and contempt of the said see, by producing royal inhibitions and menaces prevent those who have obtained letters from us and judges delegated thereto by us from dealing with the business committed to them either by taking action or by taking cognisance. Yet though it is the peculiar duty of pastors, on behalf of the flock and for the honour of the liberty of the church, to oppose those who come against them in a hostile manner, not a few of the clergy—as where the pillars are shaken the house falls—are, as is said, making impious combinations and conspiracies.

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<sup>1</sup> Clerics in minor orders are, doubtless, meant; the marriage of priests had been since the preceding century not merely illegal but invalid.



against their bishops, to the peril of the ecclesiastical state and order and the perdition of their own souls. These are serious things and cannot be left uncorrected by punishment, or by disguising their gravity passed over; and specially because these evils are said to find favour and assistance from some religious persons and clerics, from whom the mischief has passed to laymen, the very persons whom they should by salutary remedies have cured from the plague of such maladies.

These grave evils provoke an eagerness for their punishment and incite to the preparation of a suitable medicinal antidote; lest by a perverse tolerance the aforesaid beginnings of evil come to maturity even in persons of sincere Christian character, to the injury of the king, whom the tenderness of his years (not grasping the nature of the case, as is said) may in a sense seem to excuse, while it hurls back the offence on those responsible for it; as also to the detriment of the kingdom, the collapse of the faith, and the ruin of Catholic liberty. Since of those who wickedly do such things or instigate them to be done the damnation is certain, and the judgment of a God who is severe in punishment is at hand and sleeps not, the warmth of our pastoral anxiety still shows pity and consideration to the persons while it burns hotly in punishing their faults. Wherefore by our apostolical rescripts we straitly instruct and command you, [acting in] brotherhood, to bring pressure to bear on the counsellors, officials, ministers of the king and magnates of that kingdom and others, as well lay as clerical, who presume to do these things or the like, and their abettors who when they might check the perverse seem rather to encourage them; and in the simplest manner and without the din of legal proceedings compel them—as often as it may be necessary or desirable and as often as you may be called upon—without loss of time to seek to undo the aforesaid presumptuous proceedings, and to restore things to their wonted order, and in the future to abstain utterly from the like doings; not in any wise by themselves or their agents hindering or according to their power permitting others to hinder rectors of churches and clergy, in respect of the aforesaid matters and others, from exercising in peace their jurisdictions, liberties and

immunities in their temporal goods, according to the canonical and civil constitutions and accepted customs; by [your] excommunication of their persons and interdict on their lands if they are laymen, however eminent they may be for their exalted rank or great power; but if they are clergy, of whatever rank or order of dignity they may be, by privation or perpetual suspension from their prelacies, dignities, and ecclesiastical benefices; every obstacle of the nature of appeal being by our authority made of no avail. On the other hand as to the prelates and clergy of the often-named kingdom who shall be found to have instigated the laity to the utter suppression of ecclesiastical liberty, and the clergy whenever they shall, now or subsequently, rebel against the sanctity of judicial authority: unless, when competently admonished by our letters specifically bearing on their case, they do straightway take care to amend their ways, ye are to suspend them from offices and benefices, and compel them within a definite term to be by you fixed for them to compare personally at the holy see, to receive according as they have deserved. Punishing also by canonical penalty subjects whom ye shall find to admit themselves guilty of the crime of conspiracy against their prelates; notwithstanding that perhaps to some of them, under some rather comprehensive formula, it may have been by the Apostolic See generally or specially conceded that they are not to be excommunicated or their lands subjected to ecclesiastical interdict; or by whatever other indulgence of the said see the execution of the jurisdiction committed to you may be hindered or delayed, and as to which there must be full and express specification in our letters: or by the constitution of the two days' journey issued in the general council; or because we are said to have granted to the Scots that they cannot be by apostolical letters summoned to trial outwith the realm of Scotland. And if all of you cannot take part in fulfilling these instructions, then nevertheless let two of you carry them out. Given at Genoa, the day before the kalends of June, in the eighth year of our pontificate. Thanks be to God!

VII. [Letter of King James I., King of Scots, to Thomas, Abbot of Dundrennan, read in the assembly of the sacred Council of Basel, on Friday, the 14th August 1433.]

James,<sup>1</sup> by the grace of God King of Scots, to the venerable father in Christ, the Abbot of Dundrennan, greeting. We have steadily kept in mind the invitation repeatedly addressed to us by the holy Council of Basel as representing the universal church, assembled in the Holy Spirit for the reformation of morals in the clergy and Christian people, and for ending the discord between Christian princes: whereby with fatherly admonition and salutary exhortations we have been invited to send representatives to help in accomplishing a purpose so sacred. Considering therefore that if the matter be rightly looked at, nothing can be, or be thought of, more honourable than that which we are invited to do, juster or more opportune or more necessary or, in fine, more worthy of a Catholic prince or more to be desired by him; although surely the length of the way and the perils of the journey across the lands of enemies and of the voyage by sea may perhaps be held to excuse us for not having as yet sent our representatives, we shall see to it that we now do our best and utmost to send such representatives that henceforward there shall be no occasion for any kind of excuse. Reposing therefore a perfect confidence in your learning and discretion, all the more by reason of the letters you have written to move us to this step, we by our present letters patent confer on you full authority to lay before those presiding in the said council our devotion, our goodwill, and our wish to forward, as far as it lies in our power, their sacred design begun by the inspiration of the Holy Spirit, so that it may have a prosperous outcome, and to announce the unfailing and speedy arrival of our embassy. Given under our privy seal at Edinburgh, on the twenty-second day of the month of June 1433.

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<sup>1</sup> James I. reigned from 1406 to 1437.

VIII. Commission to appear on behalf of the King of Scotland at the Council of Basel, in order to associate the king and kingdom of Scotland with the work of extirpating heresies.

James, etc. To all and several under whose notice these present letters shall come, greeting. Know that we, reposing perfect confidence in the fidelity, discretion, and learning of the reverend fathers in Christ and venerable men, John of Glasgow and John of Brechin, bishops of the churches there, and our counsellors, as also of John of Melrose and Thomas of Dundrennan, abbots of these monasteries, of Donald Macnachtane and Nicholas of Athol, dean and precentor respectively of the church of Dunkeld, of John . . . and David . . . our faithful subjects, do make, appoint, and by the tenor of these presents nominate them formal and regular ambassadors and representatives of ourselves and our kingdom, giving and granting to the said John and John, bishops; John, Thomas, Donald, Nicholas, John and David, and any seven, six, five, four, three, or two of them, power, authority and our special mandate to appear for us and our kingdom in the sacred Council of Basel lawfully assembled in the Holy Spirit as representing the universal church, and to associate us and the said kingdom with the sacred council, to communicate, advise, and deal, and to conclude and determine for us and our kingdom in all that concerns the extirpation of heresies and the pacification of the Christian people and the reformation of morals, and generally for doing and performing all the other and similar acts as may about the foresaid matters be necessary or even opportune, and such as we should do if we were personally present at the said proceedings. Holding and hereafter to hold as ratified and acceptable all and everything that the regularly appointed seven ambassadors or representatives of the said kingdom or any six, five, four, three, or two of them shall hold proper to be done on our behalf and for our kingdom in the said matters. In testimony whereof, etc.

IX. [Letter of Mary, Queen of Scots, Queen-Dowager of France, to the holy synod of Trent, 18th March 1563.<sup>1</sup>]

Mary, by the grace of God, Queen of Scots, Queen-Dowager of France, etc., to the holy synod of Trent, greeting: Very reverend fathers, since the summoning of the sacred council, nothing has been more constantly present to our mind than the design of sending thither certain of the prelates of our kingdom, both in token of our duty as a most devoted daughter of the Catholic church, and on account of the advantage we thought our representatives would bring thence to all our subjects, to the more worthy recognition of the supreme holy Apostolic See. Yet so great is the trouble of this time that it not merely prevents the bishops of our realm from setting out thither, but—a thing we cannot bear without great grief—takes from ourselves all power and possibility of sending those our deputies. Therefore we have by letters requested the most reverend and illustrious Cardinal of Lorraine, our very dear uncle, to whom the position of our affairs is well known, to express and more fully expound to your fatherhoods the impediments that are in our way, and also what we have written to him of the constancy of our mind in great devotion and submission to that see: in respect whereof we beg your fatherhoods to repose faith in him. Given at St. Andrews, on the 18th day of the month of March, in the fifteen hundredth and sixty-third year from the Resurrection of our Lord.

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<sup>1</sup> Dr. Robertson printed the text from Prince Labanoff's, but in his Preface says that given by Raynald in *Annales Ecclesiastici*, vol. xv. p. 416, has some better readings. The trifling verbal differences (*doaria* for *dotaria*, *nonnullos praelatos* for *nonnullos praelatorum*, etc.) do not affect the sense, save where Raynald's *per literas nostras vobis impedimenter*, with a note, '*aliquid deest*,' is completed as above rendered. Cardinal Ludovico Madrucci died Bishop of Tusculum in 1600.



X. [A meeting of the General Holy Council of Trent, held for reading of the letter of Mary, Queen of Scots, Queen-Dowager of France, 10th May 1563.<sup>1</sup>]

On Monday, the 10th May, at the twenty-first hour,<sup>2</sup> there was held a general meeting, at which were present three most illustrious legates and the most illustrious Cardinals of Lorraine and Madruccio, and the very reverend fathers met the representatives of the Emperor, of the Kings of France and Poland, of the Duke of Savoy, and of the Venetians and Swiss; in which were read letters from Mary, Queen of Scotland, to the holy Council, in which she presented her excuses for not having sent to so famous and universal a Council as this of Trent the bishops and representatives of her kingdom, as the other Christian kings and princes had done; declaring that to have come about by reason of the many impediments that had arisen in her kingdom from the controversies about religion between Catholics and Huguenots; professing at the same time by the same letters her obedience, loyalty, and piety towards the Roman Apostolic See and the General Council of Trent. Finally, she said she had written very many instructions to the most illustrious Cardinal of Lorraine, her uncle, which he was to report in her name to the Ecumenical Council. These letters having been read, the aforesaid Cardinal of Lorraine delivered an address to the fathers, in the beginning of which he set forth the pedigree

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<sup>1</sup> The account of the meeting of the council at which Mary's letter was read is taken from the *Diarium*, printed by Martène and Durand in their *Vet. Script. Amp. Coll.* vol. viii. Raynald does not give the account in this form, but reports the facts in other words, and gives at length a speech of the Cardinal of Lorraine, with the letters sent in reply to Mary's nobles by Pius spoken of by Dr. Robertson in his Preface, pp. clxvi-clxviii.

<sup>2</sup> The old ecclesiastical day was, like the day in modern Italian popular use till 1893, divided into twenty-four hours reckoned from sunset; and as sunset varied throughout the year, the incidence of the hours varied in an embarrassing manner from month to month and in various latitudes. Even in the one month of May at any one place the time of sunset varies by about three-quarters of an hour. In Italy on the 10th May the twenty-first hour of the day would be between four and five o'clock in the afternoon.

of the said Queen Mary, and showed how much she had done in her kingdom for maintaining the Christian religion; then he proceeded to inform them, firstly, that of the bishops who are [in office] in the kingdom of Scotland some were at present in the kingdom of France, and he hoped that by the favour of God they would in a short time be present at the General Council. Others, again, were in the said kingdom of Scotland who were constantly by the queen's own side, so that they might always be ready with their advice and assistance in the arduous business of the kingdom, and could not be away from her without the greatest danger both to the kingdom and to the life of the queen herself. And the second thing he proceeded to set forth was the earnest desire the queen cherished to send hither the representatives of her kingdom, lest she herself might seem to fall short in the duty incumbent on her of protecting religion. This address having been finished, answer was made in a short discourse by the lord secretary of the Council on all the above-written points, signifying that all that the queen had by her letters promised was most grateful to the holy synod. This business having been transacted, the meeting was dismissed, and another summoned for Wednesday, the twelfth, that the very reverend fathers might pronounce their opinions on the abuses of the sacrament of orders.

XI. Fragment of the MS. preserved in the public archives of Scotland, in which are contained the headings of some of the statutes passed at the last provincial councils of the Church of Scotland.

[There are upwards of sixty headings, of which the first five rubrics refer to 'statutes not known to be preserved; then follow rubrics of fifty-six statutes of the General Provincial Council at Edinburgh in 1549,—the fragment ending as abruptly as it began' (see Dr. Robertson's Preface, p. cxcvi). It is needless to repeat the fifty-six, which are practically identical with those printed at the heads of the statutes to

which they refer. The rubrics of the five statutes not discovered in this connection are as follows :

(1) That in like manner persons who have eatables and drinkables for sale on behalf of rectors and their servants should not be prevented from selling them.

(2) Of the public proclamation four times a year of the bull *In Coena Domini*.<sup>1</sup>

(3) That excommunicate persons are to be publicly shunned, and to be kept on record by the clergy of cures.

(4) Against priests who keep back letters requiring to be put into execution that have been delivered to them.

(5) Of the mode of procedure against those who hinder the execution of the letters of ordinaries.]

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<sup>1</sup> The bull *In Coena Domini* was not, like other bulls, the work of any one Pope, but, dating from the Middle Ages, was added to by successive Popes till it took its final form under Urban VIII. in 1627, and thenceforward for a century and a half was annually published on Holy Thursday—not four times but once a year. It excommunicates heretics, those who aid and abet them, wreckers and pirates, and others. Whether this form of excommunication was to be over and above the statutory quarterly excommunication (see p. 5, and Statutes 51, 69, 122) does not appear.

## APPENDIX II

### 1. Compulsitor<sup>1</sup> for ecclesiastical persons.

Robert, by the grace of God King of Scots, to the justiciars, sheriffs, provosts, and their bailiffs and other servants, and to his faithful subjects to whom the present letters shall come, greeting. To you all collectively we, by the tenor of these presents, declare that when we have to any extent whatever infefted our faithful subjects, so-and-so, abbot and monks or canons of such-and-such a monastery or church, with lands and revenues, it is not the scope of our design to subtract, diminish, or take away aught of the lands or revenues, kains or annual dues piously bestowed on God and the church and ecclesiastical persons by us or our foresaid predecessors, the Kings of Scotland, or any other persons in our kingdom. But rather we desire that such infeftments made or in future to be made by us shall hereafter inflict no disadvantage on God and the church and ecclesiastical persons so as to prevent them from enjoying, as they were wont, the lands, revenues, kains, and annual dues, together with arrears from any terms that may be overpast. Wherefore we command and enjoin on all of you that when ye are required so to do by the venerable man, P., by the grace of God Bishop of Brechin, or his attorney, ye shall compel to appear before you according to justice all and several of those within your jurisdictions who unjustly keep back from the said bishop or refuse to pay to him rents, returns, kains, or annual dues owing to him according as the said bishop or his attorney may be able to give reasonable proof that the said rents, kains, or annual dues, with the said arrears, are owing to him, so that we may no longer have just

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<sup>1</sup> Compare the Compulsitor on pp. 208, 209. The bishop must have been Patrick de Leuchars (1351 to 1377 or later); the king Robert II.

complaints on that ground in respect of your failing so to do. The present letters to have no validity a year hence, etc.

## II. Letter of general caption of excommunicate persons.

Robert, by the grace of God King of Scots, to the justiciars, sheriffs, provosts, and their bailiffs to whom the present letters shall come, greeting. We command and enjoin on you that ye compel, by the apprehension and incarceration of their bodies, to give satisfaction to God and the church, all these in your bailiaries or burghs who shall by the reverend father in Christ, William, Bishop of St. Andrews,<sup>1</sup> or his officials, be certified to you to have contumaciously remained for forty days and more, in contempt of the keys of holy mother church, under sentence of major excommunication, and that with such expedition that we shall hear no further just complaint on that head as to your failing so to do. The presents to have no validity a year after date, etc.

## III. Letter of caption of excommunicates when the bishop has by letters patent denounced them to the king.

Robert, by the grace of God King of Scots, to the sheriff and his bailiffs, greeting. The venerable father in Christ, Walter, by the grace of God, Bishop of St. Andrews,<sup>2</sup> has by his letters patent invoking the secular arm of our royal dignity to the support of holy mother church, certified us that A. has remained for forty days or more under sentence of excommunication, and so miserably contemning the keys of the church. Wherefore we command and enjoin on you that wherever in your bailiary the said A. shall be found, ye shall by the apprehension and incarceration of his person compel him to give satisfaction to God and the church; and that with such celerity that we may on that head hear no further just complaint of your failing so to do. The presents to have no validity a year after date, etc.

<sup>1</sup> William Landels (1341-85); the king being Robert II.

<sup>2</sup> Walter Trail (1385 or 1386 to 1401); the king being Robert II. or Robert III.



IV. Letter of caption for a particular person when he is not denounced to the bishop.

Robert, by the grace of God King of Scots, to the sheriff, etc., greeting. We enjoin on you to compel [so-and-so], who for forty days and more has remained under sentence of excommunication, thus contemning the keys of the church, by the apprehension and incarceration of his person, to give satisfaction to God and the church, wherever within your jurisdiction ye shall be able to find him, and that with such expedition that we shall not hereafter hear just complaint on this score from the venerable father, William, by the grace of God Bishop of St. Andrews. The presents not to be valid a year after date. In testimony whereof, etc.

V. Caption for renegade monks.

Robert, by the grace of God King of Scots, to justiciars, sheriffs, provosts, and their coroners, to whom the present letters shall come, greeting. Since it is honourable and salutary for the royal power to cherish and defend holy religion, with God's favour, to its advancement, and benevolently to govern it, and where it has been omitted to supply by the power of the secular arm what is known to be suitable to the governance of the holy order, we command and straitly enjoin on you, that since certain professed brethren of the Friars Preachers residing within our kingdom have by instigation of the devil apostatised<sup>1</sup> from the state of their profession and insolently defied the salutary restraints of their superiors, ye cause to be apprehended such as the vicar or prior shall think it well to name to you wherever in your jurisdiction they may be found, and deliver them to the said vicar or prior. Taking such vigorous action that we may hear from the said vicar no just complaint on this head. In testimony whereof, etc.

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<sup>1</sup> *Religiosi apostantes*. Not apostates in our sense, nor heretics, but monks, 'who without authority throw off the cowl and return to secular life.'

## VI. Letters of prohibition addressed to a bishop.

The king, to such an one, Bishop of N., or archdeacon or dean or other official, greeting. A. has made grave complaint and reported to us that P. is unjustly dragging him to trial before you in an ecclesiastical court as to the lay tenement of A., which he holds of us in chief or by charter, the cognisance whereof should naturally as of right pertain to our royal court. Wherefore we command and straitly enjoin on you that, if it be as the said A. has reported to us, ye do not proceed in the said cause to the prejudice of our royal dignity. So that in respect of your failure or contempt of our prohibition it may not be necessary for the said A. to have recourse with just complaints about this to us, to such purpose that we may have to take severe measures with you and your possessions or apply some other remedy. Witnesses, etc.

Or thus: In the cause pending before you in the ecclesiastical court about the lay holding of A., which he holds of us in chief, cognisance whereof naturally ought to belong as of right to our royal court. Wherefore [as above].

## VII. Letter of prohibition addressed to an abbot.

Robert, by the grace of God, King of Scots, to the abbot of the monastery of Balmerino, greeting. A. has made great complaint and reported to us that [etc. as above]. Wherefore we command you that ye desist if so it be, etc., since our court has not failed in the matter of justice; doing as much in the case that we may hear no further just complaint about it. The presents not to be valid a year after date, etc.

## VIII. Letter of prohibition addressed to a bishop.

Robert, by the grace of God King of Scots, to the venerable father in Christ, John, by the grace of God Bishop of T.,

delegated by our lord the Pope to be sole judge, his beloved and faithful subject, or to his commissary, one or more, greeting. So-and-so has complained to us that so-and-so is summoning him to trial in the court Christian<sup>1</sup> before you in virtue of your delegated authority in the matter of the lay holding of such-and-such an estate for which he does public service, the cognisance of which naturally ought as of right to pertain to our royal court. Wherefore we command you in faith and fidelity, etc., that if it be so in the said cause [ye shall not proceed] to our disadvantage, etc. Inasmuch as our court has never failed you in the matter of justice, etc. [as above].

#### IX. Compulsitor following on a prohibition.

Robert, by the grace of God, King of Scots, to all good men and true, etc., greeting. Know that we have by our letters enjoined on so-and-so that in the prosecution [by him] of the cause in the court Christian, which we are prosecuting before so-and-so, sole judge,<sup>2</sup> etc., against so-and-so, in respect of a certain lay holding [that he should desist, as in the preceding document]. Wherefore we command and enjoin on you that if so it be ye shall put just compulsion on him by means of all his goods and gear within your jurisdiction until he has wholly withdrawn from the said prosecution of the cause. Taking such action in the case that we shall hear on that account no further complaint of your failure to act. The presents to have no validity a year after date, etc.

#### X. Letter of procuration by the Abbot of Aberbrothock giving powers to appear for him in a cause concerning him in the Synod of the Archbishop of St. Andrews.

Let it by the presents be patent to all men that we, David, by divine permission abbot of the monastery of St. Thomas

<sup>1</sup> See above, note 3, p. 207.

<sup>2</sup> In the preceding document the king calls the bishop 'sole judge' in the matters delegated to him by the Pope. In the case in hand, however, a royal functionary is 'sole judge.'

the Martyr of Aberbrothock, of the order of St. Benedict<sup>1</sup> and the convent of that place, by unanimous consent and assent of our chapter have made, constituted, and appointed, and by the tenor of these presents do make, constitute, and appoint these venerable men and brethren in religion: Alexander Masoun prior of Fyvie, Thomas Tullo sub-prior, Thomas Betgranger,<sup>2</sup> John Dryburch cellarer, Robert Cuby, Richard Scot, James Lawsoun, and Robert Gray, and any one of them, as a body, jointly or singly, to be our true, lawful, and undoubted procurators, agents, factors, and managers of our affairs, and envoys, special and general; so that the specialty shall not derogate from the generality nor contrariwise; and that there be no privileged character of priority amongst them, but what one has begun another of them shall be empowered to carry on, continue, and complete; granting and conceding to these our procurators, and any one of them, our plenary powers and special and general mandate to appear for us, and in our name, in all and several the causes and suits concerning us in the synod to be held on the twenty-third day of April in the metropolitan church of St. Andrews, before the most reverend father in Christ and lord, William, by grace of God and the Apostolic See, Archbishop of St. Andrews; and his vicars-general as commissaries,<sup>3</sup> one or more; as also all and several the other judges, ecclesiastical or secular, within the realm of Scotland, wherever their own jurisdiction may lie: about and concerning all and several the affairs, rights, possessions, and the ecclesiastical actions and disputes which [any one person] is moving or intending to move [or any several persons are moving or intending to move] against

<sup>1</sup> The Abbey of Arbroath, like those of Kelso, Kilwinning, and Lindores, is usually catalogued as Tyronensian. The Tyronensians or Tironensians were, however, only a minor congregation of the great Benedictine order, founded in 1109 at Tiron (Thiron), near Nogent-le-Rotrou, by Bernard, abbot of St. Cyprian. The congregations of St. Vanne and Tiron were in 1627 absorbed into the more famous congregation of St. Maur, the Maurists. St. Mary's Priory at Fyvie in Buchan, of the same congregation, was dependent on Arbroath.

<sup>2</sup> The *granitarius*, or 'manager of the victual' (Chalmers), appears in Lyndsay as *graniter* or *gryntar*, elsewhere in Scots as *grainter*, *grainle-man*, and *gryntal-man*; the *grainle* or *gryntal* being the granary itself.

<sup>3</sup> See note 2, p. 141.

and in opposition to us; and to take action and make defence on our behalf and in our name; to give and receive a libel or libels; to dispute and cause to be disputed a plea or pleas; to make, depone, and utter oath of calumny<sup>1</sup> or fidelity; to produce and cause to be produced witnesses, letters, endorsements, and all the other things proper to procurations; to oppose, reply to, accept, or refute for a first, second, third, or if need be fourth time the things produced against and contrary to us; to petition that sentences of what kind soever be issued, interlocutory or definitive; to appeal, give intimation, insist, and prosecute the cause as against these sentences or against any injustice; to make composition, agreement, compromise; to conclude a compromise on faith and penalty; to substitute one or more procurators who should have the same or similar powers with themselves; and generally to do, perform, and exercise all and several the other things which in the premises or as regards them may be necessary or even opportune; we holding and to hold as ratified and acceptable all and sundry that these our said procurators, or any one of them, or the substitute or substitutes appointed by them, or any one of them has or have duly and legally thought proper to do; such as we should ourselves do were we personally present and unanimous. Given under the common seal of our said monastery in our chapter house on the nineteenth day of the month of April *Anno Domini* 1487.

# XI. Commission for holding a synod on behalf of the archbishop, being absent.

Andrew, by divine mercy, Archbishop of St. Andrews,<sup>2</sup> primate of the whole realm of Scotland, Legatus Natus of the Apostolic See, and legate of the same see throughout the aforesaid

<sup>1</sup> See note on p. 128.

<sup>2</sup> Andrew Forman, promoted from the bishopric of Moray in 1514, was the fifth to hold the archbishopric of St. Andrews, and was the immediate predecessor of James Beaton, appointed in 1522. At this time there were three classes of legates in the Roman Church—*legati de latere*, 'despatched from the side' of the Pontiff, who were always cardinals; *legati missi*, called also 'apostolic nuncios'; and *legati nati*, whose office was not personal, but was



realm, with the powers and faculties of Legate a Latere to all and several the sons of Holy Mother church to whose notice the present letters shall come, Greeting in the Saviour of us all. Being by the divine favour established on the watch tower of pontifical eminence, we hold that there is nothing a more essential part of our duty than to consider sedulously and diligently all that may pertain to the rule and governance of our metropolitan and primatial church of St. Andrews and to the safe-keeping, well-being and advancement of the flock committed to our charge, and to this end we address all the sinews of our zeal and the strength of our mind, and to the utmost of our possibility study to secure the same. Hence it is that, according to the laws, and as it is recognised to have been laudably established by our predecessors, we are bound by the constitutions of our church to hold and celebrate once every year a general synod at our said church of St. Andrews by ourselves or our commissaries deputed thereto for the time being. But because being lawfully hindered by other arduous affairs of our most serene king, his realm and commonwealth, we cannot conveniently be present at the holding and celebrating of our next synod in our said metropolitan church of St. Andrews; know, therefore, that we, relying on the discretion, prudence, accomplishment in letters, and honour in life and manners, for which we know the venerable men N. and M. to be very distinguished in the Lord, and unhesitatingly confident that they will faithfully execute to the glory of Almighty God and our church's honour what we have thought it right to entrust to them; have made, constituted, and appointed them and any one of them jointly and severally, and according to the tenor of these presents do make, constitute, and appoint them our commissaries in this connection for the underwritten purposes.

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attached to the see or dignity they held, as was the case with Canterbury. The first archbishop of St. Andrews, Patrick Graham (1472), was not made *legatus natus*, an honour conferred on his successor, William Schevez (1478-96), who was also made primate of all Scotland. But Forman was the first to receive the additional dignity of being named *legatus natus cum potestate legati de latere*, with the promise of a cardinal's hat. See his synodal constitutions, later, at pp. 260-78; and other formulas by him at pp. 278-83.

Granting, conceding, and committing to our said commissaries and any one of them jointly and severally our true, free, pure, and express power and special mandate for celebrating on our behalf and in our name our said next synod to be held on Wednesday, namely, the N. day of the month of N. instant, in our said metropolitan church of St. Andrews, for summoning the clergy, for interrogating and examining; for suspending, excommunicating, fining, and punishing contumacious persons who do not come and others blameworthy or who refuse to obey their instructions or go away from the said synod before the examination of their causes. For indicting and holding a chapter or chapters, and for inquiring into and correcting at these the offences of all ecclesiastics and clerics who are our diocesans and for reforming their morals. For imposing fines and penalties, and for commuting these into temporal and pecuniary penalties for pious uses; for receiving and accepting the obedience of beneficed clergy rightly due and wont to be rendered to us as ordinary. For decreeing and ordaining, with the counsel of the clergy, such things as shall be found to be to the profit, advantage, and honour of our church and diocese and the salvation of the souls of our diocesans. For issuing and making statutes and ordinances. For deciding, determining, and pronouncing on such causes, questions, and controversies as are accustomed and wont to be decided and determined at the said synod and chapter. For admitting, but only after a sufficient examination of them previously held, curates to minister in the cure of churches, and for suspending and removing thence incompetent persons. For citing, summoning, admonishing, suspending, excommunicating, imposing additional and yet severer penalties and interdicting, and if need be invoking the assistance of the secular arm, and for releasing and absolving from these or any of these penalties as often as there may be occasion, or as it may seem to them or any one of them expedient. And for doing, saying, carrying on, and putting into practice all and sundry the things necessary to be done in the premises and such as we should ourselves do if we were personally present at the proceedings, even if they be such as demand a more special mandate than is expressly conveyed

by these presents. We, holding and hereafter to hold as sanctioned, acceptable, and settled all and whatever our said commissaries, one or more, jointly and severally, have duly thought it right to do in these premises in our name; and observing inviolably, by God's help, under penalty of condign satisfaction, the sentences, procedures, ordinances, and decrees which our aforesaid commissaries, one or more, jointly and severally, shall in the premises have passed or ordained to be done. In testimony whereof, etc.

## XII. Constitution of procuration to appear at the synod for an abbot.

Be it known to all and sundry by these presents that we, H., by divine permission abbot of the monastery of Blessed Mary of Lindores,<sup>1</sup> of the order of St. Benedict, in the diocese of St. Andrews, now have constituted, created, and appointed and by these presents make, constitute, create, and appoint the venerable men, N. and N., etc., absent as well as present, and any one of them acting as a body, jointly or severally, our true, lawful, and undoubted procurators, etc. Granting and conceding them, etc., [ . . . ] of appearing on our behalf and in our name before the most reverend father in Christ and lord the Lord Andrew, by the divine mercy Archbishop of St. Andrews, etc., and his vicars-generals or commissaries, one or more, at his next general synod in his metropolitan church of St. Andrews, on Wednesday, namely, the N. day of the month of N. next to come; and there excusing our absence and answering on behalf of us and our churches. As also of communicating, dealing, agreeing, ordaining, decreeing, entering into, and concluding with the said most reverend father and his vicars-general and commissaries aforesaid and the clergy there assembled for the time being all and sundry the things which may of right and wont be communicated, dealt with, agreed on, ordained, decreed, and concluded in the said synod and are seen to pertain to the common advantage and honour of the said church and diocese of the archbishop. Further, of giving and rendering in our name to the

<sup>1</sup> Henry Orme was abbot in 1502-23.

said most reverend father our obedience by sign-manual and on oath in due form. And of doing all and sundry the other and additional things which, etc.; [we holding as] sanctioned and accepted, etc. In testimony whereof, etc.

### XIII. Constitution of procurators to excuse the absence of a prelate at a general provincial council of the clergy.

To compear for us and in our name at the next general provincial council of the clergy, to be held at P. on the N. day of the month next to come, with continuation of days. And there along with the other prelates of the kingdom to deal with, agree on, enter on, determine, decree, and conclude such things as for the common advantage of the holy mother church, the kingdom and commonwealth are to be dealt with, agreed on, entered upon, determined, decreed, and concluded. And for doing all and sundry the other things, etc. We holding as ratified and sanctioned, etc. In common form, etc.

### XIV. Letter of Pope Alexander III. to the bishops of Scotland, directing them to hold null and void the statutes of Cardinal Vivian, who was legate to them, passed to the disadvantage of the Cistercians.

Alexander, bishop, servant of the servants of God, to the venerable brothers, the whole of the bishops of Scotland, greeting. It is alleged to us that our beloved son, Vivian, cardinal presbyter, with the title of St. Stephen on the Cœlian Hill, when he was performing his office as legate in your regions<sup>1</sup> formally ordained and decreed that the brethren of the Cistercian order should pay tithes for lands which they hold from others and cultivate. Wherefore, since we do not believe that the said cardinal passed any such decree, nor was it within his power to make a decree contrary to the

<sup>1</sup> For the controversies connected with the mission of Cardinal Vivian Tomasi to England and Scotland in 1176-77, see Dr. Robertson's Preface to the *Statuta*, pp. xxxvi-xxxviii. The letter must have been written in January 1177-78.

statutes of the Roman pontiff, or of his own proper authority to define a privilege granted by the Roman church when there is doubt about it: we, by our apostolic missive, instruct and command your whole body that ye do not, in virtue of that statute, compel the brethren of the Cistercian order or permit them to be compelled to pay tithes for lands which they till with their own hands or at their own charges, whether these be their own property or whether they hold them of others. For we deem it a most serious and vexatious matter, and one not to be borne with patience, that ye should, in virtue of that statute, infringe the authority of a privilege which has notoriously been conferred upon the brethren of the Cistercian order by the Apostolic See. . . Given at Anagni, the twenty-sixth day of January.

XV. Declaration made by the Bishop of Dunblane in a council of the clergy that the teind sheaves of Pitlour belong to the monastery of Aberbrothock.

In the name of God, Amen. By this public instrument be it distinctly known to all men that in the year one thousand four hundred and sixty-five, in the thirteenth year of the indiction, and on the eighteenth day of the month of July, and in the first year of the pontificate of our most holy father in Christ and lord the Lord Paul the Second, by divine Providence Pope; in a council of the clergy regularly and annually held by ancient and approved custom and by apostolic privilege at Perth on the feast of St. Kynelin the Martyr,<sup>1</sup> with continuation of days, in the presence of the reverend father in Christ and lord the Lord Robert, by the

<sup>1</sup> Fordun records—why is not very apparent—that ‘in that same year [819] died Kynwlfus, King of the Mercians, and his son Kynelinus succeeding him was, yet a mere boy, slain by his sister Quendrida, harmless though he was, and earned the name and honour of martyrdom’ (Bk. III. chap. 52). Bishop Forbes, no doubt rightly, identifies Kynelinus with this Kynelm or Kenelm; but neither Fordun nor Forbes gives any reason why a saint so unimportant and so peculiarly English should be remembered at Perth. His day was the 13th December. In the abridgment of this document printed by Cosmo Innes in the *Registrum de Aberbrothoc*, the spelling is *Kynnelinus*.



grace of God and of the Apostolic See Bishop of Dunblane,<sup>1</sup> the venerable father in Christ and lord the Lord Malcolm, by divine permission abbot of the monastery of Aberbrothock, in the diocese of St. Andrews, and of the order of St. Benedict, having compeared in presence of me, notary public, and the under-written witnesses, deponed and declared that the teind sheaves of the church of Abernethy, in the said diocese of Dunblane, belong to him and to his convent, but have been in virtue of certain contracts and for some years past in the hands of the late reverend father in Christ, of venerable memory, and lord the Lord James, Bishop of St. Andrews,<sup>2</sup> in which parish moreover of Abernethy certain lands of Pitlour are situated; with becoming humility he [the abbot] has demanded from the said reverend father in Christ, the Bishop of Dunblane, that it be put on record what and what kind of interest his paternity has had, has now, or may hereafter have in the said lands of Pitlour<sup>3</sup> and the teind sheaves of the same. Whereupon the said reverend father in Christ and lord the Lord Robert, Bishop of Dunblane aforesaid, on the other part and

<sup>1</sup> Keith (*Catalogue of Scottish Bishops*) makes Robert Lauder bishop from 1448 on, and gives one reference for an otherwise unknown 'Thomas' in 1459, but admits one allusion to Robert—apparently Robert Lauder—as bishop in 1465. P. B. Gams (*Series Episcoporum Eccl. Cath.*, 1873-86) follows Keith. John Hepburn was certainly bishop from 1467 onwards.

<sup>2</sup> There has been a good deal of doubt and diversity of opinion as to the date of the death of Bishop James Kennedy, one of the greatest in the succession. Dr. Hay Fleming thus sums up the authorities for us: 'Bishop Lesley gives as the date of Bishop Kennedy's death 10th May 1466 (*History*, Bannatyne Club, p. 37; Major gives 1466 (Constable's translation, p. 388); Buchanan gives not long after the 10th of July 1466 (Ruddiman's ed. 1715, i. 226); Spottiswoode gives 1466 (*History*, i. 114); and Keith gives 10th May 1466 (*Catalogue*, 1755, p. 19; 1824, p. 30). Grub, on the strength of an abstract of this document printed in the *Liber S. Thome de Aberbrothoc*, gives 1465 (*Ecclesiastical History of Scotland*, i. 375). That 1465 is the true date is borne out by the *Records of the Monastery of Kinloss*, p. 7. Maziere Brady gives 10th May 1466, but his quotations from official documents show that Patrick Grahame was appointed as Kennedy's successor in November 1465 (*The Episcopal Succession in England, Scotland, and Ireland*, i. 123).'

<sup>3</sup> Pitlour is spelt *Pelloure*, *Pellowyr*, *Pelter lower*, etc. 'The large property of Pitlour, at that time in the parish of Abernethy, but now in the neighbouring parish of Strathmiglo' (Butler, *The Ancient Church and Parish of Abernethy*, 1897, p. 218). It had been conveyed to Arbroath by charter in the reign of William the Lion.

with deliberateness, in the presence of the whole clergy in answer asserted, said, and truthfully declared that the farmer-folks and inhabitants of the said lands of Pitlour have to answer to him [the Bishop of Dunblane] and his successors annually only to the amount of four merks, usual money of Scotland, payable in equal portions at the two regular terms of the year, namely, Whitsunday and St. Martin's Day in the winter. And that the said teind sheaves of the said lands of Pitlour do without doubt pertain and in future ought to pertain to the aforesaid lord abbot of Aberbrothock and his convent and his successors in office. Furthermore, the said reverend Bishop of Dunblane, on behalf of himself and his successors, has renounced all right, demand, and claim or title of right which could in any way in future attach to him in respect of the said lands and the tithes of Pitlour, except the said four merks above written. In respect of all and sundry these matters thus expounded, rehearsed, and admitted as premised, the fore-said lord abbot on behalf of himself and his convent desires that the present public instrument should be prepared by me, the notary public undersigned. These proceedings took place in front of the great stair of the town-house of the burgh<sup>1</sup> of Perth, about the hour of eleven forenoon, in the year, indiction day, month, and pontificate as above. Present the venerable fathers in Christ, namely, David, prior of the cathedral church of St. Andrews and, the see being vacant, vicar-general; John abbot of Lindores; John abbot of Cambuskenneth; Master John Cristini<sup>2</sup> and Master Peter de Crechtoun rector of Kinnoull; with many other prelates and clergy assembled in no small numbers, expressly called and summoned as witnesses to the preceding.

And I, Donald Ade,<sup>3</sup> presbyter of the diocese of Dunblane, notary public by imperial authority, while all and sundry the aforesaid were being said and done as is above written, etc.

<sup>1</sup> *Coram magno gradu pretorij burgi*. A specification, more or less minute, of the place where the transaction took place is the regular form in a notarial instrument—in such and such a church, or churchyard, in a chamber in the castle of So-and-so.

<sup>2</sup> John Cristini or Cristine was, according to the Register of the Great Seal, official and chancellor of the diocese of Dunblane at this time.

<sup>3</sup> Modern Adie or Eadie.

XVI. The summoning and convocation of a general provincial council of the clergy of the kingdom of Scotland by the primate of the same.

James, by divine mercy Archbishop of St. Andrews,<sup>1</sup> primate of all the realm of Scotland and Legatus Natus of the Apostolic See, to the most reverend father in Christ and lord our dearly beloved brother, Gavin, by the grace of God and of the Apostolic See the most worthy archbishop of the illustrious metropolitan church of Glasgow and to his vicar or official general in things spiritual and temporal, wishes by way of salutation the happy governance of the cure he has undertaken and mutual charity in the Lord. Most reverend lord, since from the decrees and ordinances of the holy fathers so piously and so beneficially issued, it seemed good that there should be held, and there are commanded to be held, yearly or oftener, and with full attendances in every province councils-general of the bishops, as well for the peculiar culture of the field of the Lord, which roots up the briars, thorns, and thistles of heresy, error, and schism, corrects manners and misconduct, reforms the deformed and restores the vine of the Lord to the fruits of richest fertility, as for the settling of the quarrels and controversies that are wont to arise between the various orders of the church; the non-observance of which councils spreads abroads and encourages the [evils] mentioned. Not merely does the remembrance of the past and the contemplation of the present time bring these facts before our eyes, but our most renowned and excellent prince, James, by favour of the divine clemency the eminently illustrious King of Scots, fifth of the name, the unyielding pillar of the Catholic and orthodox faith and the glory of justice—to whom may all-good and almighty God grant prosperous days! and the distinguished senators of that same king's royal majesty being assembled in parliament, and honourably occupied in debating

<sup>1</sup> James Beaton was Archbishop of Glasgow 1508-22, of St. Andrews 1522-39 (see note, p. 243). By calling himself 'archbishop-metropolitan' he probably meant to emphasise his metropolitical right of summoning to his provincial council of March 1536 the archbishop of another metropolitan church. (See Dr. Robertson's Preface, p. cxxxv and note 1.)

as to the commonweal of the kingdom, agreed that it was not unprofitable that a general provincial council of the clergy and ecclesiastics of this kingdom, to be held on the day and in the place underwritten, should be celebrated to the praise and glory of Almighty God and his most excellent Mother, Mary, the inviolate Virgin, and to the immeasurable and inestimable advantage of the Scottish church. Besides, you yourself, most reverend father in Christ and lord, advised that such a council should be held, and expressly gave your assent to the same, when formerly, at a time when we could not conveniently be present, you sat at Edinburgh in consultation with very many other reverend and venerable fathers and lords and distinguished and highly esteemed men of the kingdom, your fellow-bishops, abbots, priors, prelates, and other personages most experienced in church affairs, in regard to troublesome matters touching the orthodox faith and the commonweal of the kingdom. To our paternity, as archbishop-metropolitan, though unworthy, of the church of St. Andrews, the chief and foremost and patronal church of his kingdom (over which, by gift of God, we preside under our most blessed lord the Pope, the royal majesty assenting), and as primate of the whole kingdom of Scotland and legatus natus of the Apostolic See, though unworthy, the most splendid piety and prudence of the royal majesty by his letters, full of comfort and conceived with all the sagacity of his mind and confirmed by his subscription and signet, has signified that all these things should be done, and in his judgment are likely to be fruitful; and has condescended to exhort, require, and request us, as archbishop-metropolitan, primate and legatus natus as aforesaid, to whom it of right pertains, and whose duty it is to summon the said general provincial council in this kingdom and province, that we should prepare all things that are necessary for it, so that the thing may have a prosperous issue, and that we should announce and proclaim to all the lords our fellow-bishops, and others entitled to be summoned, such a council to be by the favour of God celebrated, inaugurated, and held on the first day of the month of March next to come, in the church of the Dominican friars or Friars Preachers, within the town of Edinburgh, in our diocese. Wherefore, in view of the pre-



mised facts and wishing for all the results above and under written, as far as it is or shall be in the power of our paternity and within our right, and in so far as, by God's help, we shall be able to carry things to the desired issue, we brotherly and lovingly in the Lord ask, exhort, and request, as also by the authority we exercise, in so far as our right extends and no further, require and instruct your most reverend paternity and most exalted lordship, as archbishop and metropolitan of the famous metropolitan church of Glasgow, and your aforesaid vicar or official general, to compear in our presence and in that of the other lords our fellow bishops, prelates, and clergy, under penalty of law, at a general provincial council to be celebrated, inaugurated, kept, and holden in the said church of the Friars Preachers, in Edinburgh, on the first day of the month of March next to come, in the morning about sunrise, with continuation and prorogation of days, in order to the doing, exhorting, correcting, imposing, and adjudging the things that pertain of right to your most reverend paternity to do in the said council. Furthermore, see that ye cite and summon the reverend fathers and lords, your suffragan and subject bishops and the prelates under them, abbots to wit, and priors, provosts, and other prelates and ecclesiastical persons, greater and lesser, from amongst the more famous skilled and prudent clergy of your dioceses, as it shall seem good and expedient to you, to compear with you on the said day and at the said place, for the purposes aforesaid. And we earnestly request and, as far as our right extends and no further, require that you and your subject and subordinate prelates, anticipating the said first day of the month of March, shall not omit to compear and assemble in Edinburgh on the twenty-second day of February next to come from now, in order to give your counsel, information, and assistance in respect of the matters to be dealt with in or submitted to the council, and that ye shall there remain till the dissolution, termination, or continuation of the council inclusively. Furthermore, pray by no means omit to inform us about your having received these presents and about your having cited and summoned your suffragan bishops and subordinate prelates, and that within twenty days after these presents have been delivered to you on



our part. And pray return these presents when ye have considered them to the bearer of the same. Given under our round seal at N., etc.

XVII. Citation or order to a suffragan bishop to attend a general provincial council convoked by the primate.

Gavin, by the divine mercy Archbishop of Glasgow,<sup>1</sup> to the reverend father in Christ and lord our brother, Robert, by the grace of God and the Apostolic See Bishop of Lismore, and to his vicar or official general in spiritual and temporal things, greeting, and mutual charity in the Lord. Reverend father and lord, when lately our most excellent prince and lord, James, fifth of the name, by the grace of God most illustrious King of Scots, pillar and most ardent defender of the orthodox faith, and glory of justice, together with the three estates of his royal highness and kingdom in parliament assembled, were honourably engaged in debating about the commonweal of the kingdom, they agreed that it would be not unprofitable that a general provincial council of the clergy and ecclesiastics of this realm of Scotland, to be held and opened on the day and at the place underwritten, should be celebrated to the praise and glory of God and of his exalted Mother, Mary, Virgin inviolate, and to the immeasurable and inestimable advantage of this whole Scottish church. Besides, reverend father and lord, we ourselves—when formerly in consultation in Edinburgh with many other reverend and venerable fathers and lords and eminent and conspicuous persons of this realm, our fellow-bishops, abbots, priors, prelates, and men of most experience as to difficult problems concerning the orthodox faith and the commonweal of the realm—gave our consent to the celebration of such a council, yet without prejudice to the privileges of ourselves and our church, conceded by apostolical authority, and not otherwise. And that all these matters may have a happy issue, the aforesaid general provincial council stands, by

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<sup>1</sup> Gavin Dunbar; see note on p. 253. Robert Montgomery was Bishop of Lismore or Argyle from 1525 to 1539.

universal consent of the clergy, indicted and proclaimed to be by favour of God celebrated, inaugurated, and held on the first day of March next to come, in the church of the Friars Preachers of the order of St. Dominic, within the town of Edinburgh, in the diocese of St. Andrews. Wherefore with brotherliness and charity in the Lord, we ask, exhort, and earnestly require of your reverend paternity, as Bishop of Lismore, our suffragan, and your vicar or official general beforenamed, that ye, along with us and the other lords our fellow-bishops, prelates, and clergy in the said general provincial council to be celebrated, inaugurated, and held in the said church of the Friars Preachers, in Edinburgh, on the said first day of March next to come, about sunrise, with continuation and prorogation of days, compear, and that under the pains of law, to do, exhort, correct, impose, and adjudicate the matters which of right pertain to your reverend paternity in the said council. Do ye further cause to be cited and summoned the reverend and venerable fathers, the abbots, priors, and provosts, and other lords prelates and ecclesiastical persons, your subjects, and from amongst the more experienced and prudent of your clergy of the diocese of Lismore as it may seem to you most expedient, to compear with you at the said day and place for the aforesaid purpose. And do you and these your subjects and subordinate prelates make a point of anticipating the said first day of the month of March and of compearing and arriving in Edinburgh on the twenty-second day of the month of February next to come from this date, so as to give your counsel, information, and assistance in regard to the things to be dealt with at and submitted to such council; there to remain till the dissolution, termination, or prorogation of said council; and this we earnestly, as said is, request and beg of you. Given, etc.

XVIII. Monition by the primate of the kingdom for the purpose of convoking his suffragans and the other prelates of the realm to discuss, communicate, consult, decide, and define in respect of the defence

and maintenance of the liberty of the whole Catholic church of Scotland and the preservation of the commonweal of the kingdom, as follows.

David, by the mercy of God cardinal priest of the holy Roman church with the title of St. Stephen on the Cœlian Hill, Archbishop of St. Andrews, primate of all the realm of Scotland, and legatus natus of the Apostolic See:<sup>1</sup> To the reverend father in Christ and our brother the lord N., by the grace of God and of the Apostolic See Bishop of N., greeting and sincere charity in the Lord. Amid the serious anxieties and manifold cares of mind with which we are oppressed from the duties arising out of our pastoral office and our metropolitan and primatial functions this is the peculiar and most important, that we must constantly and assiduously watch over the defence, security, and salvation of the souls, not only of our diocesans who are our immediate subjects, but also of those others who are subject to us in virtue of our standing as metropolitan and primate of the kingdom, of whom the Divine Creator in the clemency of his benignity and by the foresight of the Apostolical See willed that we should have the cure, superiority, dominion, and pre-eminency; and by all manner of remedies and antidotes should so provide that the holy Catholic church of Scotland and its prelates, ministers, and subjects should neither in things spiritual nor temporal suffer or be permitted to suffer any harm or injury; (in this stormy time when Lutheran and other nefarious heresies swarm on all hands in the said kingdom; while the nobles and leaders of this kingdom are in a manner divided amongst themselves, and even aim at having the authority of the realm and its indivisible unity divided and separated one part from the other or transferred; and at the same time our ancient enemies of England, cut off by the ecclesiastical

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<sup>1</sup> David Beaton, who was made cardinal by Pope Paul III. on December 20, 1538, and succeeded his uncle as archbishop next year (having for a few months been his coadjutor), held many other dignities, ecclesiastical and secular (prototary Apostolic, Chancellor of Scotland, etc.), and was murdered in 1546. The 'title of St. Stephen on the Cœlian' meant that that church was assigned to him by the Pope on appointment. In like manner Cardinal Manning was 'cardinal priest with the title of SS. Andrew and Gregory on the Cœlian.'

sword from the holy Catholic and apostolic church and declared heretics, are on every side invading the kingdom in a hostile manner,<sup>1</sup> devastating it both with a sea fleet and with land armies and forces of armed men and incessant raids, and as may be presumed, unless resistance be made by a powerful hand and arm vigorously opposed to them, aim at the total and complete conquest of the kingdom and the final ruin of the church of Scotland and the overthrow of its liberty; meanwhile they and other favourers, devisers, or followers of heretical perversity and of the Lutheran or other nefarious heresies in the realm daily strive with their whole care, zeal, and diligence simply and wholly to weaken, destroy, and subvert ecclesiastical liberty itself, the standing and rights and privileges of the church of Scotland.) But that this church may always securely and, as it ought to do, peacefully remain in the unity of the Christian faith, in its pristine state, liberty, and privileges, all such errors and obstacles as make for the contrary being cleared away; and that these results may be the more easily, satisfactorily, and prosperously attained, we have decided and decreed that your reverend paternity and the other prelates of this realm, assembling together with us, with a view to giving your and their help, care, counsel, and unanimous support for the defence and maintenance of the ecclesiastical liberty of the realm and the preservation of the commonweal of the kingdom, shall presently compear for the holding of a general convention between us, your paternity, and them to the effect aforesaid on the N. day of the month N. next to come, with continuation of days. Wherefore we earnestly request and exhort your reverend paternity in the Lord, and moreover require in virtue of sacred obedience, that your reverend paternity shall per-

<sup>1</sup> In December 1543 the Scots renounced the treaty with England, concluded in July, and renewed the league with France: in May 1544, Hertford, afterwards the Protector Somerset, began the campaign in which Edinburgh was pillaged and the Lothians ravaged. Next September 1545 he again crossed the border, and a fearful campaign saw the destruction of the abbeys of Kelso, Jedburgh, Melrose, Dryburgh, and Eccles, of many Border castles, and of a melancholy tale of villages and market towns. Cardinal Beaton, held responsible for the change of Scottish policy that led to the war, was unquestionably the real ruler of Scotland in these years.

sonally compear, under competent penalty of law on this head, along with us and the other reverend fathers and our brethren, the lords our fellow-bishops and prelates and clergy, within our city of St. Andrews, on the said N. day of the month of N. next to come, with continuation of the following days, to discuss, communicate, consult on, determine and define what may require to be discussed, communicated, consulted on, determined, and defined for the conservation, maintenance, and defence of the ecclesiastical liberty of the whole church of Scotland and its privileges and immunities and the preservation of the commonweal of the realm as far as pertains to the ecclesiastical state. And we earnestly as aforesaid request and beg that ye shall cause to cite and summon by your authority as ordinary the venerable fathers the lords abbots, priors, commendators, deans, provosts, and other ecclesiastical persons your subjects, and representatives of the more distinguished and experienced and discreet of the chapter and clergy of your church and diocese of N. as it shall seem most expedient to your paternity, to compear with you on the said day and place for the purpose aforesaid, and there to remain with us and with your reverend paternity and the other prelates and clergy of the realm until the dissolution, termination or continuation of the said convention inclusively. In testimony whereof we have caused append our signet to these presents, subscribed by our hand. At our castle of St. Andrews on the — day, etc.

XIX. Monition to pay a certain contribution or tax imposed throughout the whole Catholic church of Scotland for the maintenance of ecclesiastical liberty and the preservation of the commonweal of the realm.

David, by the divine mercy cardinal priest of the holy Roman church, with the title of St. Stephen on the Cœlian Hill, Archbishop of St. Andrews, primate of all the kingdom of Scotland, and legatus natus of the Apostolic See. To our dean of Christianity of F. and to the other presbyters all and sundry resident within our diocese, whether with or without a cure, greeting and the divine blessing.



Seeing that on a former occasion, at the last convention of a most reverend and the reverend and venerable fathers in Christ, the lords the ordinaries of this kingdom and other prelates and inferior beneficed clergy assembled with us at our city of St. Andrews on the N. day of the month of N. last by past, [voting] on behalf of themselves and the other prelates and beneficed clergy who were absent; by way of subvention towards the burden incumbent [on us] for the defence of the ecclesiastical liberty of this kingdom against the assailants of the same who, in this perilous time when Lutheran heresies teem on all hands, endeavour to subvert and overthrow that liberty; and even for the preservation and maintenance of the commonweal of this realm; as also by reason of certain other reasonable causes moving us thereto and at that time more fully expressed; a certain sum of money, namely ten thousand pounds usual money of Scotland, under the name of a gratuitous contribution, was promised, imposed, and granted by us and the other lords the ordinaries of places and other prelates on behalf of themselves and the other clergy of this kingdom holding benefices of the value of forty pounds of the said money or upwards, to be paid and discharged in equal average portions at two competent terms to be fixed and appointed by us and the said ordinaries, namely five thousand pounds at each term. And this gratuitous contribution is divided into varying sums proportioned to each one severally and to be paid by each prelate and beneficed clergyman specifically according to this taxation, and to be raised, received, and apportioned by us and the other ordinaries of dioceses. You therefore and each of you<sup>1</sup> we straitly enjoin and command in virtue of your holy obedience to proceed when and wherever it is necessary on this account to proceed, and by our authority as ordinary lawfully to warn all and sundry the abbots, priors, commendators and their administrators, prioresses, and other prelates whatsoever and beneficed clergy resident within your deanery of F. and their leaseholders, agents, and intromitters with and receivers of the revenues

<sup>1</sup> The monition, though addressed apparently to one dean, seems to have been drawn up so as to refer (if need be) to several. The same is observable in the next document. For the dates of documents XVIII-XXII, see Dr. Robertson's Preface, pp. cxlii-cxlv.

of the prelacies and benefices as indicated ; the names of which monasteries, priories, priories of women, and benefices, with the proportional sums to be paid by them in respect of the tax of five thousand pounds for each of the two terms named below are noted and specified at the end of these presents ; for the first, second, and third time, and peremptorily, three times but at one warning, all of whom and each of whom we warn by name by tenor of these presents ; that between this and the N. day of the month of N. next to come : in respect of the said pecuniary contribution they pay and deliver in full and without diminution and in their respective shares to you the dean in our name (whom we depute and appoint collector for this purpose and in the sequence named) the proportion of the sum of five thousand pounds of the said money of Scotland allotted to be paid for the first term as above imposed and taxed : as also, the like and similar and equal sum taxed, allotted, proportioned and specified hereinunder, the proportion of five other like thousand pounds between that date and the feast of All Saints thereafter next to come and directly following, for the second and last term of payment of the total contribution of the aforesaid sum, namely ten thousand pounds. And let each of them in his own proper person as far as pertains and belongs to each make satisfaction and payment really and effectively in each term under pain of excommunication ; which in the same document we inflict and denounce on all and each of them who do not give obedience to the warning above described, now or hereafter, or contrariwise allow the said respective terms to lapse and the aforesaid triple canonical warning to pass unregarded : and such persons and each of them ye shall publicly and solemnly denounce, by name and specifically as aforesaid, as excommunicate persons, in their monasteries, churches and chapels and other public and suitable places on all Sundays, festivals, and saints' days. Not ceasing from the said denunciation until they return to the bosom of holy mother church, humbly seeking the relief of absolution from us or by our authority : and other details about withdrawing the excommunication ye shall receive in mandates from us. Furthermore we by tenor of the presents confer on you our

dean aforesaid our full and free power and special licence and commission in the Lord of absolving in the forms of the church either *simpliciter* or for the time being, according as they do or do not lapse again into transgression, all and sundry the abbots, priors, commendators, administrators, prioresses, and other beneficed clergy specified below and their leaseholders, factors, and intromitters with their revenues who have incurred or who may chance to incur this our said sentence of excommunication for non-payment of the said tax at the terms above-noted respectively; until they have made payment actually and effectively, in respect of the said taxes to you our dean as above; or until ye have otherwise our mandate for forbearing for the time being; and not otherwheres, otherwise, or in another manner. Given under our round seal at our city of St. Andrews on the N. day of the month of N. in the year of our Lord N., etc.

XX. Monition, with summary enforcement, for payment of a certain contribution or pecuniary tax imposed throughout all Scotland for the defence of the kingdom against the hostile incursions of our old enemies of England and of certain native traitors abetting the said enemies, and for the maintenance of a body of armed men for making resistance to the enemies.

David, by the mercy of God, cardinal priest of the holy Roman church, with the title of St. Stephen on the Cœlian Hill, Archbishop of St. Andrews, primate of the whole realm of Scotland, legatus natus of the Apostolic See, and legatus a latere of the same see throughout the whole kingdom aforesaid: To our dean of Christianity of N. and all and sundry the whole presbyters with and without cures resident within our diocese of St. Andrews, grace with the divine blessing. Since recently at a general convention of the lords the ordinaries and other prelates of this kingdom and beneficed churchmen, indicted by our authority as metropolitan and primate of the realm, made and holden in the refectory of the Friars Preachers of Edinburgh in our diocese

of St. Andrews on the day of date of the presents, by us and a most reverend and certain reverend and venerable fathers in Christ, the lords the ordinaries of dioceses and other inferior prelates and distinguished beneficed churchmen then present and representing the whole church of Scotland; Taking counsel *inter alia* upon and with deep affliction of mind taking measures for the defence of the liberty of the said Scottish church and of its privileges and immunities against the assailants of the same in these tempestuous times; and especially as far as pertains to us and the ecclesiastical estate for the guarding, maintenance, and defence of the commonweal of this realm, not only against the English, the ancient enemies of the same, but also against certain native rebels and abettors of the said enemies, who treacherously, as far as in them lies, assist the same to the surrender<sup>1</sup> of the kingdom; invading the said kingdom and its subjects in hostile wise with armed force and perpetual raids as well by sea as by land in order to the conquest of the same, attacking and despoiling by fire, murder, plundering, siege, and other like cruel modes of harassment to the uttermost ruin of the realm; primarily and before all for the guarding, maintenance, and defence of the realm and its borders and marches towards England against the ancient enemies described and the afore-said native traitors assisting them and against their invasions, raids, and schemes; and for a subvention to the Lord Regent and certain bodies of armed cavalry and infantry to be posted with him for several months to come on the borders of the said kingdom for their defence and governance, and the expulsion and ejection of the said hostile Englishmen and traitors, and in relief of the expenses of the same forces: a certain gratuitous contribution of a sum, namely thirteen thousand pounds usual money of the kingdom of Scotland, has by unanimous consent and assent been imposed by us and other sundry lords of this realm, the ordinaries of places and other inferior prelates and churchmen holding benefices to the value of forty pounds of the said money or upwards, to be paid in equal portions at the two lawful terms specified

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<sup>1</sup> *deditio*: surrender to the English king.

below; divided and apportioned in varying sums allotted severally to each prelate and beneficed churchman in respect of this taxation specifically and by name in the manner set forth below. And in order that the said contribution as it has been taxed and apportioned may as regards us and our diocese of St. Andrews and its prelates and beneficed clergy respectively be the more speedily and easily paid to the collectors appointed by us, with full powers for the purpose, we have decreed, and do hereby decree, that our simple monitory letters on this matter shall be issued, together with the measures for enforcing the payment of the same. Wherefore we straitly enjoin and command you and every one of you, in virtue of holy obedience, to proceed wheresoever and whithersoever ye should proceed, and with our authority as ordinary, lawfully warn all and sundry the lords abbots, priors, commendators and their administrators, and prioresses and other prelates whatsoever and beneficed persons resident within your deanery of N.; and the leaseholders of them and every one of them, as well as their factors and intronitters with and receivers of the fruits of the prelacies and benefices described. Of which monasteries, priories, priories of women and benefices, with the allotted payments, the names are specifically and one by one noted and specified at the end of these presents, in respect of the taxation of a sum of thirteen thousand pounds of the said usual money, payable in equal average portions at the two terms underwritten; whom and each of whom for the first, second, and third time, peremptorily, three times by one document and by a triple edict, we expressly warn by the tenor of these presents; that they discharge and pay in full and without deduction and in their proper proportion in our name to you our dean, whom we, by virtue of these presents, appoint and nominate collector for the purpose; between this and the N. day of the month of N. next to come inclusive, the first and second halves of the aforesaid contribution in respect of the said sum of thirteen thousand pounds, taxed to be paid on behalf of us and of our diocese of St. Andrews, between that and the N. day of the month of N. thereafter immediately following. And without prejudice to the previous tax or gratuitous contribution, namely, of ten thousand pounds of



the said money imposed at a convention general held by us and other lords ordinaries and prelates and clergy aforesaid within our city of St. Andrews in the month of May, in the year of our Lord fifteen hundred and forty-three last past,<sup>1</sup> as a subvention in relief, the burdens then incumbent on us for the defence of ecclesiastical liberty, a tax not yet wholly paid; and without remission of the residues of the said former contribution still remaining unpaid; and let each of the aforesaid, in as far as it belongs and pertains to each one severally, make delivery and payment really and effectively under pain of excommunication at each term; which we in this document hereby inflict and pronounce on all those and every one of them who do not give obedience to the warning referred to, now and hereafter, and contrariwise allow the said terms and each of them respectively, and the aforesaid triple canonical monition to pass unregarded. And all whom and each of whom ye and each of you shall publicly and solemnly denounce, by name and specifically and as is above prescribed, as excommunicate persons, on all Sundays, feasts, and saints' days, at their monasteries, churches, chapels, or other public places suitable for the purpose. And ye shall not cease from the said denunciation until they return to the bosom of holy mother church, humbly seeking the privilege of absolution from us or by our authority; and any other prescription as to withdrawing the excommunication ye shall receive in special mandate from us. Furthermore by tenor of these presents we bestow our power and confer a special faculty in the Lord on you our dean aforesaid of absolving, personally or by another or others thereto deputed by you, according to the forms of the church *simpliciter* or for a time, according as they do or do not lapse again into the fault, all and sundry the abbots, priors, commendators, administrators, prioresses, and other beneficed churchmen as aforesaid, and specified further on in these presents, and their leaseholders and factors and all intromitters with their revenues who have incurred or who shall chance to incur this our sentence of excommunication for non-payment of the said contribution as apportioned below and at the terms above-

<sup>1</sup> See Sadler's *State Papers*, 1809, vol. i. p. 204.

noted, until they have made payment, really and effectively, to you our dean as above, of this contribution and tax; unless ye otherwise have our mandate for forbearing [to absolve] for a time; and not otherwheres, otherwise, or in another manner. We desire also and enjoin on you our dean aforesaid that as soon as payment has been made to you of this contribution and tax ye deliver the moneys received by you to special receivers to be by us appointed for the purpose: by whom or by one of them quittances for your exoneration shall be given and received in respect of the sums of money that shall in this way be paid over by you. In testimony whereof our round seal is affixed to those presents. Signed with our own hand. At, etc.

XXI. Intimation and convocation of a general provincial council by the cardinal, archbishop, primate, and legatus de latere, under pain of censure.

David, by the mercy of God, cardinal presbyter of the holy Roman church, with the title of St. Stephen on the Cœlian Hill, Archbishop of St. Andrews, primate of all the realm of Scotland, legatus natus of the Apostolic See, and legatus de latere of that see throughout the whole aforesaid realm;<sup>1</sup> to the

<sup>1</sup> The number and variety of Cardinal Beaton's titles did not always awaken the reverence designed. At the trial of George Wishart, 'to whome the accusare, Johne Lauder afoiresaid, with hoggish voce answered, "Is not my Lord Cardinall the second person within this realme, Chancellor of Scotland, Archibischope of Sanct-Andross, Bischope of Meropose [Mirepoix], Commendatour of Aberbrothok, Legatus Natus, Legatus a Latere?" And so reciting as many titlles of his unworthy honouris as wold have lodin a schip, much sonare an asse' (see Laing's Knox, vol. i. p. 154). And if one remembers all that had been said by Pope and council on the necessity of absolute chastity in clergy, it is difficult to repress a smile when one finds Beaton's titles rehearsed at length in documents under the Great Seal connected with his illegitimate children (seven at least in number). The royal letter granting legitimation to three of his bastard sons (4th November 1539) speaks of them merely as *bastardis, filiis naturalibus Davidis Archiepiscopi S. Andree*, etc., without specifying the other honours. But in a charter of 1541 his daughter Elizabeth appears as *filie naturali David Romane ecclesie presbyteri cardinalis archiepiscopi S. Andree, Primateis Scotie ac legati nati, Mirapicen. cathedralis ecclesie administratoris generalis, monasteriique S. Thome Martyris de Abirbrothok commendatarii perpetui* (see the *Register of the Great Seal*, vol. for 1513-46, Nos. 2037, 2330).

most reverend father in Christ and our brother the lord Gavin, by the grace of God and of the Apostolic See Archbishop of Glasgow,<sup>1</sup> and to your vicar or official-general in things spiritual and temporal, wishes prosperous governance of the cure ye have received and mutual charity in the lord: Amid the grave anxieties and manifold cares of mind with which we are oppressed in virtue of the duty attached to our pastoral office and to our metropolitan and primatial functions; as also of the appointment as apostolic legate which we, though unworthy, exercise in this realm by the clemency of the Apostolic See, the most peculiar and important is that of constantly and assiduously watching over the defence, safety, and salvation of the souls, not only of our diocesans immediately subject to us, but of those others who are our subjects in our right as metropolitan and primate of the realm, and in right of the office of apostolic legate *de latere* committed to us:

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<sup>1</sup> Gavin Dunbar, Prior of Whithorn from 1515, had charge in 1517 and following years of the education of James v., and as such was known as 'the Kingis Maister.' In 1524 he was appointed to succeed James Beaton (promoted to St. Andrews) as Archbishop of Glasgow, and from 1528 till 1543 he was chancellor of the kingdom; but he was compelled in the latter year to resign the chancellorship to Cardinal (David) Beaton, now Primate. The jealousy between the sees of Glasgow and St. Andrews had long been acute; Glasgow was a bishop's see under Kentigern in the sixth century, St. Andrews not till the tenth. Glasgow keenly opposed and resented the erection of St. Andrews into a metropolitan see in 1472, and secured exemption from the jurisdiction of St. Andrews in 1488. Dunbar had again, before his consecration, obtained exemption from the jurisdiction of James Beaton; but in 1545 David Beaton got the exemption of Glasgow limited to Dunbar's lifetime. And the bitterness of the feud took a painfully personal character when, in the same year, Cardinal Beaton took precedence of Archbishop Dunbar in Dunbar's own Cathedral of Glasgow. The riot between their retainers, described with so much vigour, gusto, and caustic humour by Knox (Laing's edition, vol. i. pp. 145-147), when 'rockettis war rent, typetis war torne, crounis war knapped,' and both the archiepiscopal crosses smashed, seems to have taken place on the 5th June 1545. The Cardinal's monition was obviously drawn up posterior to May of that year; if, as is likely, it was not put on paper till after the Glasgow riot, this would be ample explanation why, in spite of a courteous 'God forbid' and the like, Beaton assumed that Dunbar would not meekly accept from him the authoritative summons to the council at St. Andrews; and why the preparation of a 'compulsitor' of the most comprehensive, cumulative, and reiterative kind was thought to be desirable and necessary on a plan that in method suggests 'the house that Jack built.' According to Knox, it wasthe trial and execution of George Wishart that brought about a *modus vivendi* between the archbishops.

over whom the Eternal Creator in his benignity and clemency, and the providence of the Apostolic See, have willed that we should exercise care, authority, dominion, visitation, correction, jurisdiction, reformation, power, and pre-eminency; and of so providing by all sorts of remedial measures and cautions that the holy Catholic Scottish church, and its prelates, ministers, and subjects, including such as are endowed with any claim whatsoever to privilege, should not in any way suffer, or be in a position to suffer, any loss or damage in these tempestuous times, when Lutheran and innumerable nefarious heresies swarm on all hands throughout that kingdom, by the agency of heretics, heresiarchs, and the abettors, authors, assistants, and followers of heretical error, and of the Lutheran and other unspeakable heresies in this realm, who daily and without intermission strive with all their care, zeal, and industry to weaken, destroy, and subvert undisguisedly and utterly the ecclesiastical liberty and the estate and the rights and privileges of the said Scottish church; but that it should always and securely and peacefully, as it ought, remain in the unity of the Christian faith, and in its historical state, liberty, and privileges, whatever errors or obstacles making for the contrary being removed. Since from the decrees and resolutions of the holy fathers, issued with pious design and to our so great advantage, it has seemed good that general councils of bishops should be held throughout all provinces, and since these have been ordered to be held, yearly or oftener, and with full attendances, first specially for the tillage of the field of God which eradicates the briars, thorns, and thistles of heresies, errors, and schisms, corrects manners and misdemeanours, reforms the deformed, and restores the vine of the Lord to fruit-bearing and luxuriant fertility; and secondly, for the putting an end to the quarrels and controversies that are wont to arise between the various orders of the clergy; in order that good results may the more swiftly, easily, and satisfactorily be attained according as your most reverend paternity and the other prelates of this realm and the more distinguished part of the clergy assembled together with us shall—with your and their assistance, care, counsel, and unanimous co-operation for the defence and maintenance of ecclesiastical liberty and of



this realm—personally compear in order to the holding for the purposes aforesaid a general provincial convention and synod to the praise, glory, and honour of the supreme and undivided Trinity of Father, Son, and Holy Spirit, and of the blessed and inviolate Virgin Mary, Mother of our God and Lord Jesus Christ, and of the celestial company of all the saints, and to the incalculable and inestimable blessing of the universal Scottish kirk.

We, by our authority as metropolitan and primate of the whole realm, to whom by right it belongs and pertains to summon and convoke in the kingdom the said general provincial council; as also by our authority as apostolic legate *de latere* conferred on us as aforesaid; and further, by apostolic authority in virtue of apostolic letters in form of a brief lately transmitted to us by our most holy father in Christ and lord the Lord Paul the Third, by divine providence Pope, for the aforesaid purpose, under date, at Rome, in St. Peter's, under the signet ring of the Fisherman, on the first of May, in the year of our Lord one thousand five hundred and forty-five, and the eleventh year of his pontificate; and which various kinds of authority we exercise in this region;

Do summon, convoke, proclaim, ordain, and appoint a general provincial council to be celebrated, held, and inaugurated on the N. day of the month of N. next to come, within our metropolitan and primatial church of St. Andrews, with continuation and prorogation of following days, until the conclusion and dissolution of the same; in which under the disposition of the Almighty we shall preside.

Wherefore we earnestly request and advise, and in virtue of holy obedience to the respective forms of authority above set forth, and notwithstanding any exemptions or privileges making for the contrary, expressly summon your said most reverend paternity personally to compear, along with ourselves and the other reverend fathers and our brothers, the lords our fellow-bishops and prelates and clergy of this realm, within our said metropolitan church of St. Andrews, at the eighth hour of the morning, on the said N. day of the month of N. next to come, with continuation of following days even unto the final conclusion of the said general provincial council;



to discuss, communicate, consider, determine, and define the things that have to be discussed, communicated, considered, determined, and defined for the preservation, maintenance, and defence of the ecclesiastical liberty of the whole Scottish church, and the privileges and immunities of the same, under the penalty of interdict from entering the church.

Furthermore, we earnestly, as aforesaid, request, invite, and by the various kinds of authority above set forth, and under the aforesaid penalty summon you to see to it that ye by your authority as ordinary cite, invite, and summon the reverend and venerable fathers, the lords bishops your suffragans, and the abbots, priors, commendators, deans, provosts, and other discreet churchmen, your subjects, and some of the more distinguished, experienced, and prudent members of the chapters and clergy of your church, city, diocese, and province of Glasgow; also the religious of whatever order they may be, and, and as aforesaid, whatever exemption they may enjoy, according as shall to your most reverend paternity seem most expedient, to compear with you on the said day and at the said place, for the purposes set forth, and there with us and with your most reverend paternity and the other prelates and clergy of the realm to remain until the dissolution, termination, conclusion, or continuation of the said general provincial council.

But if haply your most reverend paternity—which we do not believe—shall refuse personally to compear at the said day, hour, and place, for the purposes above described, then after the lapse of the six days immediately following the said N. day of the month of N. next to come, now as then and then as now,<sup>1</sup> by the authorities above set forth and the triple canonical warning having first taken place, we in this same document interdict you from entering the church, and pronounce you to be interdicted and as already interdicted. And if your most reverend paternity shall continue under

<sup>1</sup> *Ex nunc prout extunc et e contra*. Du Cange has *pro-tunc* in the same use, as in *Annectimus, unimus et pro-tunc prout ex-nunc, et pro-nunc prout extunc, virtute praesentium*, etc. (=Des a-present comme des-lors et des-lors comme des a-present). The *e contra* is to save repetition of the phrase in the inverted order, not 'contrariwise,' but 'vice-versâ.'

such interdict for other six days immediately following the first named six days, then in these presents by the same authorities, and now as then and then as now, canonical warning having preceded, we suspend you from divine rites, and pronounce you as suspended. But if your said most reverend paternity—which God forbid!—shall, with hardened heart, continue under the said sentences of interdict and suspension for other six days immediately following the first twelve days, then in these presents, like canonical warning having been made, now as then and then as now, by the same authorities, inflict upon you sentence of excommunication and denounce you as excommunicate. But if you, the said most reverend paternity, contumaciously remain under the said sentences of interdict, suspension, and excommunication respectively for other six days immediately following the first eighteen days: We from that date onwards—seeing that as perversity, contumacy, and disobedience increase, so also deservedly ought the punishment to increase, and lest the easiness of the punishment should produce audacity in transgression—hold that our measures in this regard should be increased in severity, and do hereby so increase them; and do in these presents, now as then and then as now, canonical warning being duly given, by the authorities already named, add severely to your sentence of excommunication and pronounce you excommunicated with additional severities. But if your said most reverend paternity shall—which God forbid!—with hardened heart, continue under the said sentence of interdict, suspension, excommunication, and increased severity respectively; then forasmuch as presumption and audacity demand that they who are not checked by a simple punishment shall be restrained by more severe ones, in order that their faith be not offended who have given their observance to their superiors, we hold that our measures in this regard shall have re-increased severity added, and do hereby so re-increase them: and in these presents, now as then and then as now, canonical warning having been given, we, by the before-named authorities, do therefore add re-increased severity to your sentence, and denounce as having been so dealt with you, the said most reverend paternity already

interdicted from entrance to a church, suspended from divine rites, excommunicated, and denounced as excommunicated with a sentence of increased severity: Commanding all and sundry the faithful of Christ, of either sex, and particularly those of the household and the servants of your said most reverend paternity, thus as aforesaid interdicted from entering the church, suspended from divine rites, excommunicated with increased and re-increased severity, that within six days after the day on which they have knowledge of these presents, which days we by tenor of the presents declare to be for them and each of them the triple and canonical warning and peremptory term, they do wholly and utterly cease and desist from all society, communion, domestic relationship, or service with your paternity, interdicted as aforesaid from entering the church, suspended from divine rites, and excommunicated with increased and re-increased severity. Nor let them or any one of them presume, save in the cases and persons permitted by law, to be associated with the same [*i.e.* your reverend paternity] in serving, talking, cooking, in giving food or drink, water or fire, or in any of the comforts of human society. And if they do contrariwise, we then as now and now as then, canonical warning of six days as aforesaid having been given, do by these presents inflict on them the major sentences of excommunication, and pronounce them excommunicated and each of them, who contravenes this injunction and rebelliously associates with your said most reverend paternity, already interdicted from entering the church and suspended from divine rites, and excommunicated with increased and re-increased severity. Finally, if your said most reverend paternity—thus as aforesaid interdicted from entering the church, suspended from divine rites, excommunicated with increased and re-increased severity—imitating the hardness of Pharaoh's heart, and after the manner of deaf adders that stop their ears so that they may not hear the voices of their charmers, continue under such sentence of re-increased severity for other six days immediately following the said thirty days, then do we thenceforward, then as now and now as then, the canonical warning having been given by the authorities above named, and by the tenor of these presents subject to ecclesiastical interdict your city of

Glasgow, as also all and sundry the cities, estates, burghs, towns, castles, manor houses, and the collegiate jurisdictions, parishes, and districts whatsoever belonging to what churches soever in or about or to which your most reverend paternity—thus as aforesaid interdicted from entering the church, suspended from divine rites, and denounced as excommunicate with increased and re-increased severity—may happen to stay, proceed, or arrive, so long as your said most reverend paternity shall remain there. Commanding therefore all and sundry ecclesiastical persons to cease and to cause others to cease from performing divine rites thenceforward, so long as your said most reverend paternity—thus as aforesaid interdicted from entering the church, suspended from divine rites, declared excommunicate with increased and re-increased severity—shall remain in the said places. And this cessation from performing divine rites they shall observe and continue for three days continuously even after the departure thence of your said paternity, and, as far as in them lies, they shall permit and constrain the cessation to be observed and continued by others. So and in such sort that while such interdict remains in force, no church sacraments shall be administered in and about the said places in which your said paternity has been, except penance and baptism to all indifferently, the eucharist to the sick only, while matrimony must be contracted without church ceremonies, and burial with church rites must be utterly refused to those who die in or about these places. Whereas we reserve to ourselves or to our superiors alone the power of giving absolution to all and sundry who have fallen or may in any way chance to fall within the scope of our above-named sentences or any one of them. And we will and by the aforesaid authorities ordain that you be held bound to bring these present letters, received from the bearer by your most reverend paternity, with you at the said day, hour, and place above specified. In testimony whereof our round seal is attached to the presents. Signed with our hand. At our city of St. Andrews, on the N. day of the month of N., in the year of our Lord one thousand five hundred and forty-five, and of our consecration the eighth year.

XXII. Monition for the convoking by bishops of inferior prelates and discreet churchmen and learned and experienced religious of all orders to compear at a general provincial council summoned by the cardinal archbishop, primate, and legatus de latere with censures as under.

David, etc. To our dean of Christianity of F., and to all and sundry ecclesiastical persons, presbyters with or without cures, and public notaries and scriveners of all descriptions resident throughout our city and diocese and province of St. Andrews and elsewhere throughout the realm of Scotland, and to him or them to whom our present letters shall come, grace with the divine blessing. Amid the grave [and so on, as in the preceding; *mutatis mutandis* so as to avoid all reference to the archbishop or others not included in this summons; and altering the sentence beginning 'And we will' at the ninth line from the end thus: 'And do ye bring with you to St. Andrews the presents duly executed and indorsed'].

XXIII. Synodal constitutions and ordinances to be published annually at the general synods.

1. The most reverend father in Christ and lord, the Lord Andrew,<sup>1</sup> by divine mercy Archbishop of St. Andrews, primate of the whole realm of Scotland, legatus natus of the Apostolic See, and for the whole said kingdom legate of the said see, with the powers and faculties of legatus de latere, etc., issues his mandate to all and sundry the lords abbots, priors, archdeacons, provosts, and rectors of parish churches, and the perpetual vicars of the same, portioners and pensioners, and other chaplains and presbyters with or without cures, and parochial clergy compearing in this holy synod, that decorously, holily, and devoutly, according to good manners, they wholly abstain from all unlawful acts, indecent words, or

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<sup>1</sup> Andrew Forman was archbishop from 1516 to 1521. See note 2, p. 230.



unseemly gestures, and bear themselves reverently and properly and without noise in this church and other places; and let deans and rectors, vicars, curates, and chaplains, wearing clean surplices and having their hair cut to a proper degree of shortness, be within the church and churchyard of the same, at the eighth hour of the morning, prepared to take their places in their various degrees and according to the directions to be given them by the deans; and let them remain within the chancel of the choir and inside the limits of the church during time of divine worship and sermon, quiet and attentive, and prostrate on the ground<sup>1</sup> when prayer is made; and let none of the aforesaid retire till the said holy synod be finished and ended, and till after he have asked and received permission from his most reverend paternity, under pain of major excommunication.

2. The said most reverend father directs that warning be given, and by this present public intimation on the doors of this his metropolitan church of St. Andrews, gives express and peremptory warning: To all and sundry the parsons holding ecclesiastical benefices within this his diocese, and who owe to his most reverend paternity and his archdeacons respectively procuration fees and synodal dues for the current year, or for more than one year past, of whatever dignity, standing, rank, order, condition, or distinction they be: that neither they nor any one of them depart from this holy synod

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<sup>1</sup> *Prostrati in terra* is here doubtless used as we use prostrate—‘bending with faces towards the ground.’ *Prosternari* is *in terram procumbere*. Clerics who have just been warned not to converse and make unseemly gestures in church would hardly be expected to assume at every prayer the exceptionally penitential attitude of *prostrati omni corpore in terra*, such as Egbert’s Penitential prescribed in certain cases; see Du Cange, *s.v.* The point is worth noting; since, in comparison with other nations, the Scots were in this century known to lay ‘the greatest stress of all on this duty [kneeling or *geniculatio*]: a nation whose members seem to observe the practice by bending the knee, some to a greater and some to a less extent than others, on certain and fixed occasions by day and night; not only with the purpose of lamenting their sins but in the exercise of their daily devotions’ (Galfrid, quoted in Thomson, *De Antiquitate Christianae Religionis apud Scotos*, translated in volume two of the *Miscellany* of the Scottish History Society, vol. xlv. p. 128). Prostration is enjoined in Statute 115 (p. 60).

until they or he severally and respectively, fully and completely, have made payment on the aforesaid account actually and effectively to their deans, or to the factors of their deans and of their said archdeacons deputed thereto, under pain of the greater excommunication; which he hereby pronounces on those thus warned who do not render obedience to such warning before the lapse of three days immediately following the publication of these presents; and he instructs that denunciatory letters be issued in due form, to be carried into effect both with specification of names and comprehensively, at their churches, or wherever it may be necessary. He further directs by way of addition that no rectors of churches, or vicars with or without cures, resident within his diocese of St. Andrews or making sojourn there, who owe any sums of money imposed by our senior commissaries on them for irregularities or more serious offences, and assigned to the maintenance of the fabric of this church, shall depart from this holy synod or leave the city before and until satisfactory and complete payment has been made of the said liabilities incurred as above detailed to the collector and receiver of the same, on pain of the greater excommunication as aforesaid.

3. Although his most reverend paternity, in view of the many various and reiterated admonitions and ample documents already had and taken cognisance of by himself and his predecessors, against and in respect of rectors of parish churches, and the perpetual vicars, portioners of or pensioners on the said churches, and chaplains, who hold ecclesiastical benefices and chaplainries but do not reside in the same, and against those who openly keep wenches and concubines, to the grave discredit and injury of the whole church, might justly have by course of law proceeded to the deprivation of such from their benefices and chaplainries, and to other severe penalties, or have forthwith deprived and punished the said persons: Yet desiring, now that it is fully time, to deal considerably rather than rigorously with all and sundry the aforesaid [irregularities], which through no small negligence have till now been left undealt with; by these presents ordains and admonishes all and sundry the above-named persons holding ecclesiastical

offices or perpetual chaplainries within this his diocese to put away, eject, and renounce such wenches and concubines, so that on this score henceforward no suspicion or scandal can possibly arise, and to take up their personal residence at their churches and chapels, or creditably set themselves to work at the study of the virtues and the daily lectures on literature<sup>1</sup> within this his Alma Universitas of St. Andrews;<sup>2</sup> within forty days if they be within the kingdom, but within the space of four months if they are outwith the realm, actually to begin and continue to study to some purpose. Also to repair, rebuild, and cause furnish with all the necessary ornaments of the altar their churches, manses, and ecclesiastical buildings pertaining to the same, within four months reckoned from the present date; under pain of deprivation as to non-residents and the loss and confiscation of the fourth part of the revenues of their benefices, to be applied and set apart for the fabric of the metropolitan church; but as regards those who openly keep wenches and concubines, under pain of suspension from their offices and from the celebration of divine service, or even of imprisonment and of other severe penalties, to be inflicted without favour or compassion, according as the nature of the offence demands. And those keeping such wenches and concubines who after three corrections (one being made every year) repeat the offence again, and who persist in their odious misdemeanour, his paternity by these presents suspends, if they hold cures, from all ministering in the charges where hitherto they had ministered; in such sort that they shall in future in nowise be admitted or received to minister in such cure or in any other within this diocese. And he furthermore instructs all and sundry his deans openly to recite, and in writing to record, the names of delinquents in this connection, or of those who in any way in future violate or infringe the present statute, and cause these names to be exhibited and presented to his most

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<sup>1</sup> *In virtutum studiis et literarum quotidianis lectionibus.* See note I on the 26th of this series of mandates, p. 277.

<sup>2</sup> *In hac alma universitate sua Sanctiandree.* There is no direct English equivalent to *alma universitas*, though its *alumni* call it *alma mater*.

reverend paternity on the morrow of each synod.<sup>1</sup> On pain of their removal from their offices and deaneries, etc.

4. Moreover, all and sundry the oratories, chapels, monasteries, and other places not consecrated [as churches] throughout the whole of this diocese, unless they be endowed, adorned, kept in repair, and so completely built as to accord with reverent feeling and the performance of divine worship, whatsoever they are and to whomsoever they pertain, the said most reverend father hereby suspends and interdicts from having divine service celebrated in the same. And thereanent he enjoins on all and sundry the priests of this diocese, and others whom it may concern, that so long as such suspension and interdict remain in force they shall not, without his special licence and permission, presume to celebrate or administer on any occasion masses of any kind or other sacraments of the church in such chapels, oratories, and unconsecrated places, on pain of suspension from [the power of performing] divine rites. And he ordains that they who do contrariwise shall *ipso facto* incur this sentence.

5. Also the above-named most reverend father, suitable consideration and counsel having been had, orders to have revoked, and by this present public edict revokes, all and sundry the powers and faculties of hearing and making confessions conferred on what persons soever, generally or specifically, verbally or in writing, even when granted for life, except the power [of hearing confessions] privately<sup>2</sup> bestowed on the Friars Preachers and Friars Minors; as also letters of indulgences and of pardoners issued by authority of the ordinary; and admissions of beneficed persons which have not till now been made by his most reverend paternity: strictly prohibiting from this hour onwards all and sundry the above-named from presuming with rash audacity to make use, on any pretext, of any letters of licence issued before the date of these presents, or of faculties formerly

<sup>1</sup> *Crastino cujuslibet synodi*: the morrow after each synod; cf. No. 7, p. 266.

<sup>2</sup> *In occultis*. The powers of confessing and absolving, first conferred (with restrictions) on Dominicans and Franciscans in 1244, were confirmed and extended by Pope Alexander IV. in 1256.

granted to them in their own proper person, under a like sentence of the greater excommunication: which sentence his paternity declares to be *ipso facto* incurred by those who do contrariwise; unless those seeking admission to benefices shall, after being carefully examined and found qualified, be held deserving to obtain *de novo* faculty and licence by his letters patent. But the examination of all persons seeking admission to benefices he by these presents reserves to himself and his commissaries deputed or to be deputed thereto, etc.

6. Likewise the said most reverend father, the lord archbishop and legate, enjoins on all and sundry the beneficed clergy of his diocese, under the aforesaid penalty of excommunication, that they present and deliver to the receivers thereto appointed by the synod the names, correctly and faithfully written on suitable schedules of paper, of the excommunicated, and of persons who have deceased, with the apportionment of the goods of the defunct, of those whose wills have not yet been confirmed; as well as of those whose wills are registered as confirmed, together with the names of the churches [they were connected with].

7. Further, the most reverend lord aforesaid enjoins on all and sundry the beneficed clergy of his diocese, that for the advantage of the descendants they bring with them at the present and every future synod, and deliver to the commissary appointed thereto, copies of the wills of those who have died this year, so that such commissaries may annually, as may be required, lawfully call and constrain to render statement, account, and reckoning, the executors of such wills, at the end of a year of administration, of their faithful administration of such office of executry. And that these ends may be better and more easily attained, he enjoins, as at various past synods he has enjoined, on all and sundry his deans that henceforth and in future they accurately and faithfully register in one book proper for the purpose all wills that involve confirmation on their part in virtue of their offices: And that for the registration of every will in which the dead's part exceeds ten pounds Scots they shall receive sixpence, and



if under ten pounds fourpence only. And as to the more considerable wills which come up for the confirmation of his most reverend paternity, he enjoins that they be likewise faithfully registered annually by his secretaries,<sup>1</sup> and that for the registration of each of these solely and only two shillings of the said money be received: To the effect that the issue shall not be defrauded of the portions that fall to them as children, and that the pious wishes of the deceased and their bequests be respectively carried out and discharged, under pain of suspension from [celebrating] divine rites in the case of benefited clergy and of removal of the said deans from their offices. In respect of the execution of this statute, secretaries and deans are to be annually examined at a synodical chapter to be held yearly on the morrow after the synod.

8. The said most reverend lord the archbishop also enjoins that all his deans holding office within his diocese shall on the eve of every synod now and henceforth bring with them their books of corrections, visitations, and irregularities, also the register of wills, and produce and deliver them to himself or his commissaries deputed or to be deputed thereto in order to their being examined, on pain of deprivation from their offices.

9. Likewise the said most reverend [father] enjoins that every holder of a cure within his diocese shall from this date and in all future years at every synodical chapter produce in his hands and exhibit before himself or his commissaries for the time the book popularly called the *Manipulus Curatorum*,<sup>2</sup> that they may be examined whether they can distinguish

<sup>1</sup> The archbishop's *secretarius* is the functionary who later came to be known as the (episcopal) chancellor.

<sup>2</sup> *Manipulus Curatorum*, sometimes Englished 'Maniple of the Curates,' was the usual name for a compendium of canon law. Here obviously it was not the other kind of *manipulus curatorum*, a much more comprehensive mediæval compendium 'of necessary information for the use of those to whom the cure of souls was committed,' which discussed amongst other things the sacraments, the ten commandments, and the articles of the faith. A well-known version of that maniple was one of the books printed by Wynkyn de Worde and Pynson. See Maskell, *Monumenta Ritualia Ecclesiae Anglicanae* (2nd edition, vol. ii.), p. xc.

between cases competent to the Pope only, to bishops, and to priests respectively; so that the souls of the Christian people may in no respect be put to a disadvantage in their confessions and absolutions, on pain of their being removed *simpliciter* from their cures.

10. Since it pertains to the office of the most reverend paternity to eradicate all evil customs from this diocese, and to command that all the extant laws of the sacred canons be diligently observed by his subjects, he therefore intimates that he will, as far as in him lies, labour faithfully that this be brought about. And since it is ascertained that two evil customs or rather corruptions, by the instigation of the enemy of the human race, have increased in this his diocese of St. Andrews to an extent deserving condemnation, namely, that to the hurt of their souls many, contrary to the laws and the sacred canons make secret compacts and a kind of espousals privately and in a concealed manner, followed by carnal union, before marriage is contracted: whence arise troubles and disputes that afterwards come in the way of lawful marriages actually contracted or about to be contracted. Item that many contrary to the laws, after espousals made *per verba de futuro*,<sup>1</sup> and before the contraction of marriage and its solemnisation in the face of the church by a form then and there making it binding, do not hesitate to pass to carnal union: He therefore to the extirpation of the aforesaid abuses orders that all and sundry of the clergy holding cures in this diocese of St. Andrews shall four times a year, namely, at the Four Seasons,<sup>2</sup> by general proclamation of excommunication according to custom enjoin all their parishioners not to contract clandestine espousals secretly and in private, but contract them [*i.e.* espousals] publicly before the priest, with a sufficient number of witnesses. And that after the espousals have taken place all priests of this diocese shall strictly prohibit those who have contracted them from having carnal union until marriage has been lawfully

<sup>1</sup> As to espousals *per verba de futuro* and *per verba de presenti*, see above at p. 72.

<sup>2</sup> The Ember Days, see note 1, p. 26.

contracted and solemnised in the face of the church by a form signifying that it is then and there made binding. And let this be strictly observed by widows as well as by others. He further enjoins on all his deans that at every one of their chapters they warn all beneficed clergy falling within their jurisdiction, that they carry out the aforesaid prescriptions annually as said is. And that they annually make inquisition in their chapters if this mandate have produced its due effect. And he orders that beneficed clergy and priests who fail of their duty in these points be annually put on record by the deans at their visitations; and be held bound on that ground to undergo correction at the hands of their senior commissaries. And he intimates that priests and beneficed clergy who do not make the denunciations incur for every time of failure a penalty of four shillings, and the contracting parties of ten shillings, to be applied to the maintenance of the fabric of the church of St. Andrews.

11. Likewise, for the restraining of the abuses on the part of certain of the regular clergy who are not afraid even publicly to contravene the laws and sacred canons which forbid the solemnisation of clandestine marriage and of marriage of any kind at seasons prohibited by the church; desiring accordingly that such laws and canons be effectively observed, he prohibits and inhibits any priest or holder of a cure within his diocese from solemnising or in rash and reckless manner venturing to solemnise matrimony between any persons what soever at a time prohibited by the church, or any kind of clandestine marriages, and not till after the banns have been solemnly proclaimed on at least three festival days respectively as of right, under penalty of suspension from the celebration of divine rites inflicted as a sentence in these presents, and also of forty shillings to be applied to the fabric of this church. And let the said persons contracting marriage contrary to the precepts of the church be after such contract separated from one another for a month according to the canons. And let them meanwhile underlie excommunication, and as penalty for their transgression pay down forty shillings for the fabric of this church, and if they be noble or of rank,

ten pounds according to the quality of the persons, before they receive absolution; as to which penalties the deans shall be answerable annually at the synods. And in regard to the fulfilment of this statute, let the several deans make inquisition annually at their visitations, both as to past deeds and arrangements pending. And let them take oath of the holders of cures thereanent. And let them at every synod bring with them in writing the names of delinquents, and personally present them to his most reverend paternity under pain of removal from their offices. Also the deans are to be examined in the chapter with regard to the carrying out of this inquisition for the preceding year, etc.

12. Item, since according to the laws a cleric who does not wear the habit suitable to his order and standing renders himself unworthy of the honour due to that standing: the aforesaid most reverend father orders to be warned, and by the tenor of this public edict expressly warns, all and sundry the provosts, deans, rectors, vicars, chaplains, both those with and those without cures, and other clerics of his diocese possessing and wearing unsuitable gowns and garments fashioned at the back after the manner of organs,<sup>1</sup> with long, wide, and spacious sleeves and having towards the front folds and apertures with lacings: who further with their dangling hair, full beards, and birettas laced with small cords after the fashion of the laity and secular persons, and contrary to the mode of life and repute of the clergy create a public scandal in the church: that they now and henceforth wholly and utterly give up and renounce [such fashions]; and cause to be made and fitted to their persons now and henceforth such gowns and garments as, becoming their clerical standing, are neither too long nor too short. And let them wear round birettas and have their hair short as beseems them: under a penalty on provosts and rectors of twenty merks, on prebendaries and vicars ten merks, and on vicars-pensioners, chaplains, and other inferior clerics of five merks, to be applied to pious uses at the discretion of the said most reverend father. He furthermore

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<sup>1</sup> *Ad modum organorum*; with plaits so as (distantly) to resemble an arrangement of organ-pipes.

orders that no cleric of this his diocese whether beneficed or not shall hereafter publicly wear corslets either of leather or of iron, commonly called *cadurcae*,<sup>1</sup> nor other military arms or armour, save only where there is just cause for apprehension; on pain of suspension from divine rites and the forfeiture of the corslet or *cadurca* and other arms aforesaid; which from this time forth he has decreed shall be applied respectively to the fabric of this his church of St. Andrews: on which subject he enjoins all his deans that in their several chapters they shall make diligent inquiry whether after the synod any of the clerics subject to their jurisdiction wear such *cadurcae* or arms. And if they find any such, let them be compelled to pay the value of the said *cadurca* to the fabric of the church: for which penalties the said deans shall answer annually; and they are now to answer for the execution of this statute during the past year.

13. Further, the said most reverend commands all and sundry priests, rectors, vicars, holders of cures and all other ecclesiastical persons whatever, that they do not ask or seek aid, support, or assistance directly or through an intermediary from any secular person<sup>2</sup> when and if it has befallen them to be fined or punished for their shortcomings, crimes, and excesses by the said most reverend, his officials, commissaries, or deans: and that they do not accept help from the said persons or take advantage of their assistance, under the penalty of the sentence of suspension from the celebration of divine rites imposed in these presents, and of forty shillings to be applied to the fabric of the church of St. Andrews: On which inquisition shall annually be made in the deans' chapters.

14. Furthermore, inasmuch as it has come to the ears of the said most reverend father—a thing at which he feels both grief and bitterness of soul—and is daily more widely noised abroad,

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<sup>1</sup> *Cadurcum* was originally a coverlet of linen as made amongst the *Cadurci*, the tribe living in Gallia Narbonensis, whose name still appears in the name of the town of Cahors. So Juvenal uses the word, later applied as we see here; perhaps through confusion with the derivatives of *coriacea* ('leathern'), ultimately *cuirass*.

<sup>2</sup> Cf. Statutes 55, 157.



that many of the lords temporal and other secular persons,<sup>1</sup> and even churchmen too, do to the grave prejudice, detriment, and injury of ecclesiastical jurisdiction and liberty, and in contravention of the prescriptions of the sacred canons forbidding such things to be done, issue, pass, and make in their courts and proceedings<sup>2</sup> at the Whitsunday and other terms, numbers of bye-laws by which they prohibit or inhibit their subjects and tenants one and all from citing, summoning, convening, or bringing to an ecclesiastical court any other of their tenants, even in matters which by right and custom belong and pertain to the ecclesiastical courts, under a certain specified penalty contained and set forth in their said objectionable regulations, including the loss of their holdings, defying thereby the sentence of the greater excommunication inflicted on those who do such things: Therefore the said most reverend father ordains on all and sundry rectors, vicars, curates, and other priests that four times a year, namely, when the general excommunication is published to the people, they shall in their churches cause the said makers of bye-laws to be publicly declared and denounced as excommunicate: which makers of bye-laws, of whatever standing or condition they be, the said most reverend lord hereby excommunicates, and declares that they are as excommunicate everywhere to be shunned and avoided by Christians: And accordingly instructs all his deans to make annual inquisition about the aforesaid makers of bye-laws at all their visitations and chapters. And let this be one item in the visitation yearly.

15. Likewise since many secular persons and others do not fear to combat and fight within<sup>3</sup> the sanctuary of God, and by effusion of blood and other forms of violence, pollute and defile churches and churchyards, the said most reverend therefore declares by tenor of these presents that all such violators and polluters of whatever dignity, standing, rank, condition, or distinction they are, do *ipso facto* incur sentence of excommunication, and are denounced as excommunicate; whom

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<sup>1</sup> Cf. Statute 50.

<sup>2</sup> *Stilis.*

<sup>3</sup> Within, *infra.*

also he by these presents ordains to be shunned even before declaration or denunciation [to that effect has been made].

16. Likewise inasmuch as some or rather many persons violently and by the strong hand seize and detain, from the bearers and executors of the same, letters from him as ordinary, and from his officials and commissaries directed to parish churches for the purpose of being put into due execution, and take and snatch them from the hands of the beneficed clergy and others putting them or proposing to put them into due execution, and tear them to pieces, or otherwise hinder them from being put into due execution, and so disturb ecclesiastical jurisdiction: the said most reverend father therefore declares that all and sundry such seizers, snatchers, detainers, and tearers of letters or hinderers of their being put into execution, of whatever dignity, standing, rank, order, condition, or distinction they be, do *ipso facto* incur sentence of greater excommunication. And he in like manner ordains the same persons to be shunned even before denunciation, and to be debarred from divine rites.

17. Besides, the said most reverend lord the archbishop and legate orders to be warned, and by the tenor of these presents specifically warns, all and sundry rectors, vicars, and curates of parish churches, and other chaplains whatsoever of his diocese, that they are not to ask, demand, or receive money or any gratuity for putting into execution the letters of his most reverend paternity or of his officials or commissaries. On the contrary that as soon as they have seen the said letters they are without any delay or excuse to put the same duly into execution, and after indorsing them according to rule, to return them gratis and freely to the holders and bearers under penalty of suspension from the celebration of divine rites inflicted as sentence in these presents, and of five shillings to be exacted without remission from delinquents for every time of offence.

18. In addition, since, as has repeatedly been reported by public and common rumour to the said most reverend father, the most sacred body of Christ our Saviour and the holy sacrament of the eucharist is borne for the communion of the

sick through streets and districts in an irreverent and secret fashion: the said most reverend lord therefore commands all and sundry rectors, vicars, and their curates, and all other priests whatsoever settled in his city and diocese of St. Andrews, in order that greater reverence and due honour may by the common people be shown to the said holy eucharist, that henceforth they bear<sup>1</sup> the said eucharist through the city and the aforesaid districts publicly, they being becomingly and decorously arrayed in clean surplices and the stole, with at least one lighted candle or lamp in front of them, and a bell in the hand of the attendant ringing the while: under a penalty of forty shillings on each delinquent as often as the irregularity occurs, etc., and without remission, to be applied to the fabric of the church of St. Andrews. And thereanent let inquisition be annually made by the deans at their visitations and chapters; of which offence the correction shall henceforth pertain to the principal commissaries of his paternity.

19. Also the said most reverend father ordains that the concubines and wenches of ecclesiastics, and especially of priests, who conceive by the said priests shall not be purified after childbirth unless by them sufficient caution be first produced that they will hereafter abstain from carnal connection and the suspicion of cohabitation; under a penalty of the payment of twenty shillings, on the person of the chaplain who purifies such wench or concubine, to be applied and paid over for the fabric of his church of St. Andrews.

20. Again that the overlaying of infants and innocents, which often happens, be avoided: Therefore the said most reverend lord archbishop enjoins on parents and nurses of the said infants that such infants shall in nowise be allowed into the beds of grown-up persons till at least two years after their birth, but that they be tucked in<sup>2</sup> and separately

<sup>1</sup> The text actually has *quod stola induti . . . eucharistiam . . . deferetur*. Compare Statutes 51, 117.

<sup>2</sup> *Colligantur*: not with the bed-clothes merely, but with straps for the purpose, fastened across the cradle. . . . The construction of *mandat . . . mandantes similiter* . . . is curiously careless.

and carefully deposited in their cradles: And he therefore exhorts all and sundry the vicars and curates that they earnestly instruct, inform, and admonish the said parents and nurses in public in their churches, under penalty aforesaid of suspension from the celebration of divine rites.

21. The same most reverend father also commands to be warned, and by tenor of these presents warns all and sundry vicars - pensioners, or such as hold perpetual pensions for service in cures, that they without delay in proper person keep residence beside their churches<sup>1</sup> for the daily administration of the divine rites and the sacraments to their parishioners with their own hands, and that they withdraw substitutes from the same, and that they themselves serve in the said cures on pain of deprivation of their benefices and pensions.

22. The aforesaid most reverend lord the archbishop and legate also commands to take warning and warns his deans that at their next chapters, to be held in the accustomed manner, they hold each in his own deanery, under pain of removal from their offices, faithful inquisition anent all and sundry foundations of perpetual chaplainries, and make a point of recording in writing the names and surnames of the chaplains who do not give service in such chaplainries, or infringe in any way the said foundations; that a wholesome remedy may, as the rules of law demand, be applied so that the souls of the founders be not defrauded of their due religious rites. And the deans are to be examined as to the execution of this statute during the preceding year at the next following chapter.

23. As also the same most reverend father commands to take warning, and by tenor of this public edict expressly warns, all and sundry holding cures<sup>2</sup> in his diocese that on the Wednesday at the synodal chapter, under pain of the

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<sup>1</sup> *Apud suas ecclesias*: that they should live at or near their churches.

<sup>2</sup> *Omnes et singulos curatos*; which seems to imply that in spite of all statutes and prohibitions, those who held the cures were—often at least—not actually the clergy who served in them.

suspension aforesaid, they formally and in writing exhibit before him or his commissaries deputed thereto the names and surnames of the priests of their churches respectively, as also of the parish clerics of the same; that the said most reverend may provide a suitable remedy for securing that divine service is held in his churches, cures, and charges.

24. Furthermore the aforesaid most reverend lord archbishop and legate commands to take warning, and by tenor of these presents warns all and sundry rectors, perpetual vicars, and pensioners doing duty in his churches, as also their curates and chaplains whomsoever holding chaplainries in their parishes on a foundation, or drawing stipend thence on some other conditions, that on all Saturdays<sup>1</sup> at vespers, and on Sundays and all other feastdays whatsoever at high mass and at vespers, they shall in proper person be actually present in the said churches; and, arrayed in clean surplices, shall then, the bells having been rung and candles lighted according to custom on the high altar, solemnly celebrate, distinctly and with a loud and intelligible voice, their vespers, matins, and masses, that by their ministrations divine worship may the more be magnified, and the common people the more readily be moved to devotion, under the penalty of two shillings on delinquents for each time. He likewise warns all and sundry the parish clerics and their substitutes to be present at the said celebrations, arrayed similarly in surplices, and there to take part in the service, as they are by law and custom bound in virtue of their office to do, under pain of deprivation from their offices. Furthermore, in respect of certain reasonable causes moving his mind thereto, he warns the said parish clerics at the next chapter to be appointed by his most reverend paternity, formally and actually to exhibit before

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<sup>1</sup> *Omnibus Sabbatis*. Though the Catholic Church in Scotland (unlike the Celtic Church) recognised the obligation of a quite strict Sabbath-keeping on Sunday (see Hamilton's Catechism on this head), the names *Sabbatum* and *Dies Dominica* were not used interchangeably. *Sabbatum* was Saturday, and the *Dies Dominica* was regularly called Sunday. *Sabbatum* or *Sabbathum* is found for Saturday occasionally long after the Reformation, and as late in Scotland as 1614. To the present day *die Sabbati* is used regularly for Saturday in the *Journals* of the House of Lords.



himself, or his commissaries deputed for the time to this duty, the certificates of their admission and confirmation by him as ordinary, and that in their own person and not through substitutes, under pain of privation from their offices, to be inflicted without any compassion on such as do not exhibit their certificates: whereanent the deans shall annually make inquisition at the time of their visitations, and they are to be annually examined at the synodal chapter as to their having made such inquisition.

25. In supplement the aforesaid most reverend decrees and ordains that all and sundry who deliberately remain for a year under the foul stigma of excommunication, unless lawful appeal have been made by them, shall, by all faithful Christians be regarded held and reputed as heretics, and shall be liable and shall deserve to be challenged to their faces by all as heretics and publicans.<sup>1</sup> And accordingly he commands all and sundry holding cures in his diocese in their churches, before the Christian people assembled for service, publicly to denounce as heretics and publicans such infamous persons as, without trembling or the fear of God, thus nefariously continue and remain beyond the year under the foul stigma of excommunication: Forbidding the said good Christians thereafter to hold any communion with those thus denounced under sentence of excommunication, until they have returned to the bosom of holy mother church humbly seeking the blessing of absolution: Whereanent the several deans shall henceforth annually make inquisition at their visitations, and record and exhibit the same in writing at each synodal chapter under pain of removal from their offices, etc.

26. In order that his Alma Universitas of St. Andrews may flourish in the number and multitude of scholars and students; and that the holy religious orders<sup>2</sup> consecrated to God may

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<sup>1</sup> *Hereticos et publicanos*; *publicani* being simply a term of reproach, from Matt. ix. 10. So Lyndsay names *Publicanis* as reprehensible persons along with *Scrybis* and *Pharistens* (*Monarchie*, 2608; cf. 78).

<sup>2</sup> *Religio*: the religious orders collectively.

prosper in the gifts of the virtues and the sciences<sup>1</sup> in proportion to the richer means of sacred instruction in the law of the Gospel afforded in the same to the religious serving most high God throughout his diocese: And that it may produce more abundant fruits in the Catholic church of God, contending against carping heretics who essay to injure the holy Christian faith: the said most reverend father, the lord archbishop and legate, accordingly enjoins on all and sundry abbots, priors, and commendators of monasteries within his diocese of St. Andrews, that within forty days of the publication of these presents they send, and that each of them do actually and in fact send two professed religious from each of the monasteries of St. Andrews, Aberbrothock, Dunfermline, Scone, Coupar,<sup>2</sup> Lindores, Cambuskenneth, Holyrood, and Newbattle, as also one religious from each of the monasteries of Kelso, Dryburgh, Coldingham, and Balmerino; to reside continuously and study in the sciences and virtues in his said Alma Universitas of St. Andrews, to the honour of the said university and the orders they belong to, as was wont to be done by a usage approved from of old and praiseworthy; but at the expense, to be generous and sufficient for the purpose, of the said monasteries; under a penalty of twenty pounds Scots for each religious whom they fail to send, to be applied for pious uses at the discretion of his most reverend paternity, and to be exacted without any remission.

27. Finally, the oft-named most reverend lord archbishop and legate enjoins on all and sundry his deans, that within the three days immediately following they bring with them

<sup>1</sup> *Virtutum et scientiarum donis*: compare below in same mandate *in scientiis et virtutibus*, and above in the third of the present series *in virtutum studiis et literarum quotidianis lectionibus*. And in XXIV. *in lectionibus literarumque scientiis et virtutibus*. The archbishop was apparently not referring to any *trivium* or *quadrivium* or other specific distribution of the academic curriculum at St. Andrews, but with 2 Pet. i. 5 (*ministrate in fide vestra virtutem, in virtute autem scientiam*) in mind, was distinguishing knowledge and virtue, the theoretical and the practical; the theoretical being regarded as falling into literature and the other liberal arts or sciences, while 'the virtues' no doubt included ethical studies.

<sup>2</sup> Coupar-Angus had a richly endowed Cistercian abbey.

copies of the present constitutions and statutes, and on the holders of cures that each of them within his diocese do, at their next chapters to be held by them according to use and wont, but at the expense sufficient for the purpose of the said holders of cures, formally produce in writing copies of the same, in order that the said statutes and constitutions may be the better observed by them, on pain of removal from their offices; also he enjoins on all and sundry the holders of cures aforesaid that they, and each one of them respectively on his own account, do personally present and exhibit such copies to his most reverend paternity at each synodal chapter; under a penalty of five shillings on those who do not so produce their copies, to be applied to pious uses and to be exacted without mitigation; Yea and the deans are to be examined as to the observation of this statute during the past year at the next following chapter.

Now the absolution or release of all and sundry who in any way in respect of the aforesaid have incurred or may chance to incur such sentences, censures, and penalties the said most reverend father, the lord archbishop and legate, specially and expressly reserves to himself and his commissaries deputed for the purpose; and this he intimates to all and sundry whom it may concern by these presents, to which is affixed the round seal of the said most reverend lord. At, etc.

XXIV. Monition in respect of beneficed clergy that they keep residence under pain of the confiscation of a fourth part of the fruits of their benefices, with sequestration of the same, in event of their not obeying.

Andrew, etc. To our dean of Christianity of L . . .<sup>1</sup> Although we aforetime duly, lawfully, and in accordance with the sacred canons, as is more fully shown in our said synodal constitutions, warned all and sundry the beneficed clergy, to

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<sup>1</sup> Linlithgow was one of the rural deaneries of the diocese of St. Andrews; so was Lothian or Haddington. See note 11, p. 70.

wit provosts, prebendaries, rectors, perpetual vicars, portioners and pensioners, and altarists<sup>1</sup> holding chapelries of foundation in our diocese and subject to us, in our two synods last past held and celebrated by ourselves personally in our metropolitan church of St. Andrews and our monastic church of Holyrood respectively, orally and by the medium of the living voice, as also in written form by means of our synodal constitutions publicly affixed to the doors of the aforesaid churches, and by documents read aloud in a clear and audible voice by our secretary<sup>2</sup> in our said synods in our own presence and that of the clergy assembled there, to the effect that within a certain time, then defined, of forty days immediately following the said publication, which term we prescribed to them and to each of them to be a peremptory term, they should keep continuous and personal residence at their churches, benefices, and chapelries, or study in our university of St. Andrews at lectures and in the sciences of letters and in ethics, under a penalty then inflicted and imposed by us, to wit of the confiscation and exaction of a fourth part of the fruits of their benefices to be applied at our discretion to pious uses, and without further process of law or action: nevertheless . . . have by no means taken care nor do they at this present take care to keep personal residence in their benefices, churches, and chapelries, or in our aforesaid university: we accordingly propose to carry into due effect the said penalties formerly inflicted on them: we therefore command you . . . to lawfully warn all and sundry the provosts of collegiate churches and canons and prebendaries of

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<sup>1</sup> *Vicarios perpetuos, portionarios et pensionarios, ac altaristas.* A church or chapel charged with a payment to the mother church was called a pensionary; but sometimes a pensionary seems to mean simply a church or chapel in receipt of a pension or endowment. And vicar-pensioner or pensioner, properly the cleric in charge of a pensionary in the first sense, seems in the sixteenth century in Scotland to have been used practically for a beneficed clergyman. In Scotland the pensionary was a pensionare or vicar pensioner, his charge a 'vicarage pensionarie.' The portioner was of course the cleric in part possession of a benefice, hence he was not the only incumbent, but one of two or more. The altarist was a kind of chaplain, in possession of an altarage—in Scotland often an endowment for saying masses for deceased friends at a particular altar.

<sup>2</sup> See note 1, p. 266.

the same, and the rectors, perpetual vicars, portioners, and pensioners of parish churches, and the chaplains of chapels and chapelries settled in our diocese and within your deanery, whose names and surnames and benefices are noted in detail and specifically at the end of these presents, that they do now, and henceforth within the fifteen days next and immediately following such warning, return to their benefices, churches, and chapelries, and keep personal residence in the same, and study personally to serve the cure in them as they are held bound by law to do, or carry on their studies in our aforesaid university of St. Andrews at lectures on literature and in the sciences and in the virtues,<sup>1</sup> under the aforesaid penalty: which we instruct you the dean of Christianity of L. to exact and confiscate from them as soon as the said fifteen days have elapsed. And in the event of any impediment being put in your way so as to prevent you from peacefully exacting the said fourth part: we command you thereupon to sequester all and sundry the fruits of the benefices of those who offer such impediment, and to put the same under strict ecclesiastical sequestration in the hands of the parishioners of the said churches.<sup>2</sup> And do ye as soon as ever ye may return these presents to us, duly executed and indorsed. Given at, etc.<sup>3</sup>

XXV. Monition in respect of the executors of deceased persons warning them to produce wills and inventories for confirmation within nine days after the death of the testator, etc.

Andrew, etc. To the clergyman of the parish church of E.: Inasmuch as we have lately decreed and ordained in our last

<sup>1</sup> See note 1, p. 277.

<sup>2</sup> The dean was to warn the parishioners not to pay tithes, etc., to the incumbents, but to see that the sums due were safely reserved in the meantime—a very effective method.

<sup>3</sup> This and the next five items, like No. XXII. above (all taken from the St. Andrews *Formulare*), were printed in a somewhat abbreviated form by Dr. Robertson, as indicated in his Latin text. The translation could not exactly reproduce the same effect, and no attempt has been made to indicate where non-essential clauses were omitted by the editor of our text.



held general synod, presided over by us in person in the church of the monastery of Holyrood, by means of our general synodal constitutions publicly affixed to the doors of the said church and read and published in a loud and audible voice by our secretary, clerk, and notary in our presence, that thenceforth all and sundry testamentary executors of those dying within our jurisdiction should actually and in writing produce the inventories of their goods or their wills to us and to our commissaries deputed or to be deputed thereto, one or more, within nine days of the death of the same, for the purpose of receiving from us confirmations of the said testaments and of paying to us thereupon the quotas due to us in that respect; and have duly warned the same generally and comprehensively to carry out and observe inviolably the said constitutions and ordinances under the penalties therein specified; and although we might without further measures proceed to exact the said penalties from delinquents: nevertheless, desiring to deal more gently with them, we instruct you now and anew duly to warn as a body all and sundry the testamentary executors of such as die or decease, of both sexes, within your parish that within nine days thereafter immediately following upon the death of the testator they do regularly and in writing produce to us or our aforesaid commissaries such wills or inventories of goods, in order to receive confirmation and to pay voluntarily the quotas due to us thereupon, under the penalty of suspension from divine rites for presbyters and excommunication for laymen, and [we enjoin you] to certify the same that on the lapse of the said days we shall proceed with the nomination and appointment of executors dative to the said deceased persons. And the presents, etc. . . . Given at, etc.

XXVI. Monition to those who absent themselves from synods and chapters as to the payment of their penalties and fines.

Andrew, etc. To our dean of Christianity of F . . . Since all and sundry the prelates, abbots, priors and prioresses of the monasteries within our diocese, and the provosts, deans,

canons, and prebendaries of collegiate churches, and the rectors of parish churches and their perpetual vicars, portioners, and pensioners, and other ecclesiastical men whether presbyters or chaplains having chapelries or altarages, as also all others, as well those who have as those who have not cures, and parish clergy within our diocese, are held bound and are under strict obligation of right and in virtue of laudable and approved statutes and ordinances, both provincial and synodal, to compare personally at our general synod and the chapter of the same, for the advantage and union of the whole church and for necessary correction and discipline to be carried out on our delinquent subjects, and to give obedience to our synodal statutes, decrees, and ordinances aforesaid and the regulations prescribed in the same, as read and published annually at the said synod: Nevertheless [certain of the] ecclesiastical persons aforesaid . . . have contumaciously absented themselves from our last past synod and its chapter and [disregarded] their summons to the same, thereby incurring the penalties and fines imposed by approved use and wont; We therefore enjoin you, on pain of suspension from the celebration of divine rites, duly to warn all those whose names and surnames, with their fines and penalties and the reasons of these penalties, are specified below at the end of these presents, that within nine days immediately following such monition they discharge and make payment of the undernoted sums to you our dean in our name, on pain of suspension from the celebration of divine rites on presbyters and of excommunication on parish clerics who are not presbyters. And if unhappily they with hardened hearts—which God forbid!—remain under such sentence for nine days immediately following such denunciation, then do ye sequester and submit to ecclesiastical sequestration in the hands of their parishioners or the clergy to whom they have committed their charges, as to you, the dean, may seem most expedient, all and sundry the fruits of their monasteries, benefices, chapelries, and clerical appointments until complete payment is received of the aforesaid penalties and fines. And do ye retain these presents duly executed and indorsed, in your, the dean's, own hands. Given at, etc.

XXVII. Excommunication levelled in virtue of a synodal statute against those who pollute a churchyard with human blood.

Andrew, etc. To the incumbent of the parish church of N. Since some time ago in order to prevent the reckless outrages of secular and other persons who, forgetting the fear of God, do not scruple to engage in fight and combat within the sanctuary of God, and pollute and defile churches and churchyards by the shedding of blood and other deeds of violence; we have, by our synodal constitutions<sup>1</sup> solemnly published every year in our general synods, decreed that all and sundry such violators and polluters of—whatsoever dignity, standing, rank, order or condition they be—do *ipso facto* incur sentence of the greater excommunication, and are denounced as excommunicate; whom also we have decreed, even before the publishing of the denunciation, to be persons who are and ought to be shunned as excommunicate by all Christians, as is more fully set forth in the said constitutions. And as we have heard, certain persons, N., N., and N., laymen, have violently and cruelly wounded a certain W. D. within the boundary walls of the churchyard of the said church of N., and that to the great effusion of blood, on the N. day of the month of N. last past, polluting and defiling the said churchyard with human blood. Wherefore we straitly instruct and command you, etc., publicly and solemnly to denounce the said N., N., and N., laymen, as excommunicate for the reasons aforesaid, in the manner aforesaid, in the above-mentioned church on all Sundays and holidays; not ceasing from the said denunciation until ye receive from us instructions to the contrary. And these presents, etc. Given at, etc.

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<sup>1</sup> See No. 15, p. 271.

XXVIII. Monition, including a proclamation, addressed to a vicar charging him to pay his curate's salary, viz., ten pounds, according to the terms of the statute enacted thereanent.

David, by the mercy of God, cardinal presbyter of the holy Roman church, with the title of St. Stephen on the Cœlian Hill, Archbishop of St. Andrews, primate of the whole realm of Scotland, legatus natus of the Apostolic See, etc. To our dean of Christianity of M.<sup>1</sup> Since heretofore at our various former synods held and celebrated by us in person, mature deliberation having first been held thereupon with the advice of our clergy throughout our whole diocese of St. Andrews, we have decreed, imposed, enacted, commanded and ordained, as a thing to be generally and without exception and without fail observed by all rectors and vicars within our diocese who have, for the time being, curates under them in their churches for the purpose of serving the cures of the same, that to every curate, duly admitted for the time being by our authority as ordinary, there shall be annually paid and discharged as his annual fee, stipend, and salary for serving and ministering in such cure the sum of at least ten pounds usual money, paid in cash at the ordinary and accustomed terms, or in any case twelve merks of the said money, with tofts and crofts and church lands of a value of not less than three merks more, altogether making up the said sum of ten pounds, as is more fully set forth in our synodal statutes and also in our provincial constitutions above enacted, passed, and published. We therefore instruct you duly to warn Sir Jo. K., vicar pensioner of the parish church of C. in our diocese, serving the notice on him personally<sup>2</sup> if ye can conveniently secure his presence, otherwise by public intimation in the parish church in which the vicar-pensioner is settled and at which he ought, by such our synodal statutes, to make personal residence, and is thereto held bound, on some Sunday or other feast day in the presence

<sup>1</sup> Mearns and Merse were both rural deaneries of the diocese.

<sup>2</sup> *Personaliter apprehensum.*

of the people there assembled to hear service, that within fifteen days immediately following such monition he make full discharge and payment to the discreet man, Sir Jo. L., curate of the said church of C., duly admitted by us or by our authority, of five merks usual money of the kingdom of Scotland, owing him for the past terms in respect of his fee and salary for serving in the cure of the said parish church, as also hereafter and in future of the said sum of ten pounds, or the equivalent thereof in four equal portions annually and at term times, on the feasts of the Invention of the Holy Cross, of St. Peter ad Vincula, of All Saints, and of the Purification of the Blessed Virgin, being the fee and salary of curates hitherto in use and wont to be paid, or make amicable composition with him thereanent, under pain of the greater excommunication. And these presents, etc. [Given at, etc.]

XXIX. Monition as to the payment of procurations and annual synod dues, wont to be paid at the synod in terms of the synodal statutes.

David, etc. To the dean of our Christianity of H. Whereas recently at our last general synod held personally by us in our metropolitan and primatial church of St. Andrews, on Tuesday the twenty-second of the current month of April, and formerly at all our other general synods held and celebrated by us personally, and from the day of our departure by commissaries specially deputed thereto for the time being in respect of the primatial and metropolitan church of St. Andrews, we have by our synodal constitutions drawn up in form of a public edict and annually read and published at our synod aforesaid, admonished all and sundry the abbots, priors, prioresses, provosts, and ecclesiastical prelates of all monasteries and orders whatsoever, and rectors of parish churches and their vicars perpetual, vicars-portioners, and vicars-pensioners, and the commendators of such churches, monasteries, and priories, holding prelacies and ecclesiastical benefices within our diocese of St. Andrews, who owe for the



current or several past years procurations and synodal dues in respect of such churches and benefices and monasteries, priories, and prelacies; as also their lease-holders and receivers of and intromitters with the funds, revenues, perquisites, tithes, and produce of their monasteries, priories, convents, prelacies, and benefices, of whatsoever dignity, standing, rank, order, condition, and pre-eminency they may be, that neither they nor any one of them—compearing for the time being or held bound to appear at the last past synod and those that preceded it—should depart from the said synod or synods respectively until they or he should regularly and actually discharge and pay severally and respectively and entirely and in full to our deans or their agents appointed for the purpose, the procurations and synodal fees due by them and by each of them as aforesaid, under pain of major excommunication; and against them and each of them thus admonished and who do not yield obedience to our said monitions, after the lapse of the three days immediately following such monitions, we have promulgated such sentence of greater excommunication; and have ordered our letters of denunciation thereanent to issue, to be carried into effect with names and specifically in due form in their monasteries and churches and other places as may be required; as is more largely and fully set forth in our said synodal constitutions bearing on the same and annually recited, as said is; And as we gather from the report of you our said dean, not a few lords abbots, priors, prioresses, commendators, provosts, and rectors of parish churches, and vicars perpetual, portioners, and pensioners of the same, and other beneficed clergy within our said Christianity and deanery of H., owing us procurations and synodal dues for the current and other past years respectively, and other lease-holders and receivers of and intromitters with the fruits, revenues, and produce of their monasteries, priories, convents, provostries, and benefices, our said synodal constitution being by them and each of them treated with utter neglect and contempt, have contemptibly<sup>1</sup> departed from

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<sup>1</sup> *Contemptibiliter*; but perhaps in the sense of *contemptim*, ‘contemptuously.’

our said last and other preceding synods without having made to you the said dean even the smallest discharge or payment on account of our said procurations and synodal fees due by them to us annually as aforesaid in respect of their prelacies and benefices, and wont to be paid at the synod, or have contumaciously absented themselves from our said synods: And although in virtue of the aforesaid [statutes] we might straightway proceed to the infliction, declaration, and denunciation of the said sentence of the greater excommunication on the said persons; yet desiring to deal more gently with the same: we therefore straitly enjoin on and command you, under pain of suspension from the celebration of divine rites, that ye duly warn all and sundry of those whose names and surnames with the sums of money due by them in respect of the aforesaid procurations and synodal fees are underwritten at the end of these presents, that within fifteen days immediately following such monitions they fully and wholly make discharge and payment to you, the venerable man, Master N., dean of our said Christianity of H.,<sup>1</sup> in our name of such procurations and synodal dues specified below, under the like penalty of the greater excommunication: which on the lapse of the said fifteen days and after the said triple canonical monition we pronounce and publish on those who do not yield obedience to our said monitions; And whom ye are publicly and solemnly to proclaim excommunicate, naming those by name and specifically in execution of these presents, during the solemnities of masses or other sacred services. But and if the said excommunicate and proclaimed persons remain under the said sentence of excommunication for other fifteen days, then in virtue of these presents and by our authority as ordinary we sequester in the hands of their respective parishioners all and sundry the fruits, revenues, returns, rights, tithes, incomes, and emoluments of the aforesaid monasteries, and other churches and benefices which stand indebted to us as aforesaid in respect of procurations and synodal fees: Inhibiting on this score all Christians, so long as this our sequestration continues, from infringing the same

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<sup>1</sup> Haddington or Lothian.

in any respect under pain of the greater excommunication. Furthermore to you the said Master N., our dean, we commit our power of absolving, in the form sanctioned by the church, all and sundry the said persons who shall have incurred the said sentence of the greater excommunication, from the salutary penance proportioned to their offence, in force against them by mandate of the church and therethrough imposed on them; but only provided that to you, our dean, in our name, full payment be by them made or other amicable arrangement agreed on in respect of such procurations and synodal fees due by them, and the accustomed oath having been first received from them. And these presents, etc. Given at, etc.

XXX. Letter of John II., formerly Archbishop of Lyons, to William, Bishop of Glasgow, on the temporal administration of the church of Lyons.<sup>1</sup>

To the venerable lord and fellow-priest, William, by the grace of God Bishop of Glasgow, J. formerly Archbishop of

<sup>1</sup> This letter, though coming awkwardly after a sixteenth century item, is of special interest in a collection of these Statutes, as having been written to that Bishop of Glasgow who afterwards, as Bishop of St. Andrews, received the papal sanction for the Scottish Provincial Council. A Frenchman born and bred, William Malvoisin became one of the Scottish *clerici regis*, and in 1199 chancellor of the kingdom. In 1200 he was ordained to the see of Glasgow at Lyons by the archbishop. But the writer of the letter was no longer archbishop. John de Belmeis or Belesmains (also De Bellesme and Belesmeius), a native of Canterbury, and a lifelong friend and correspondent of St. Thomas Becket, was by Henry II. of England made Bishop of Poitiers in 1162: in 1184 he became Archbishop of Lyons and primate of the Gauls. For nine years he maintained the dignity of his see against even Philip Augustus; but in 1193, resigning the archbishopric, he made a pilgrimage to Becket's tomb, and, retiring to St. Bernard's Abbey of Clairvaux, ended his days in seclusion about 1203. We know that he was at Clairvaux in 1200, for at his own request St. Hugh of Lincoln visited him there in that year.

In his letter Belmeis hardly overstates the exalted rank of his metropolitan and primatial see, or the singular standing of the secular sovereignty attached to it; and he greatly understates the difficulties, amounting at times to open war with adjoining counts and rebellious citizens, the Archbishop of Lyons had to face. Long the capital of one or more of the Burgundies, Lyons became, with its

the First Church<sup>1</sup> of Lyons, but now the least of Christ's priests, greeting in the true Saviour.<sup>2</sup>

As we already replied to you, good brother, on occasion of your former letters,<sup>3</sup> we know well that you will be able to find on your return journey—which we hope will be prosperous—men much more wise and prudent [than we], who will be able to answer you more wisely and fully on the questions you have propounded to us, and on any other that it may occur to you to ask; especially as you intend to direct your course by way of the city of Paris, where there is no doubt you can find many who are skilled both in divine and human law. But that we may not leave the problem you set us wholly unattended to, we shall try to explain to the best of our ability the plan we followed in accordance with the example of our predecessors and the experience of our own times.

That archiepiscopal see in which you have now received

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territory, a fief of the empire in 1032, and was at times practically an independent state. In the thirteenth century the troubles betwixt archbishops and citizens led the archbishop first and the citizens afterwards to put themselves under the protection of the French kings; and in 1310 Philip the Fair added the once imperial city to his dominions. Till then Lyons with its territory was in the empire, while its archbishop was primate of the three Gauls. Malvoisin was consecrated in September 1200, and was at Dover in February of the next year, so the letter must have been written between those dates. There is nothing in the letter to suggest that Malvoisin and Belmeis had met—rather contrariwise; still less that Belmeis had himself (as the *Dictionary of National Biography* seriously asserts s.v. *Malvoisin*) consecrated the Bishop of Glasgow. Dr. Robertson seems to have inferred from Mabillon that Belmeis was still archbishop in 1200, and that he consecrated Malvoisin.

<sup>1</sup> 'First church' (*ecclesia prima*) does not mean the first of the churches—there were several famous churches in Lyons—nor yet directly 'primatial church.' The term was a simple but special title of dignity peculiar to the primatial church of St. John in Lyons, which, built in 1110-80, is still, or was till the separation of church and state in France in 1905-7, the primatial church as it was in the days of Belmeis. The church of St. Martin d'Ainay, still more ancient, stands on the site of a Roman temple, and was rebuilt in the tenth century. *Ecclesia major*, used by Belmeis of his church further on, might be employed with regard to any cathedral.

<sup>2</sup> *In vero Salutari*. *Salutare*, it should be noted, not *Salutaris*, is the form of the adjectival noun used instead of *Salvator*.

<sup>3</sup> *Per priores litteras vestras*. If *vestras* (so in Mabillon) is not by accident for *nostras*, it can hardly mean 'letter or letters addressed to you,' 'a former letter in correspondence with you'; more likely the idea is 'replied to the question raised in your former letter.'

consecration to the episcopal honour, where for some years we, though unworthy, exercised episcopal functions, has the very ample jurisdiction which you call 'barony,' as well within the limits of the Empire as in those of the kingdom of the Franks, because the metropolitan district belonging to that place is enclosed within the limits of both states; nor do we think that any other church will readily be found which enjoys in two states the prerogative of so great liberty. Accordingly we exercised the duty pertaining to the honour and responsibility imposed upon us on this wise. I [*sic*] had a seneschal to whom I entrusted the responsibility for and care of legal business, who according to the nature of the business dealt not merely with pecuniary causes but saw to the punishment of crimes and serious offences in accordance with the custom of the country; in order that, as you remarked in your letter, wicked men should not by impunity be encouraged to greater boldness in transgressions. But if the nature of the offence inferred either the penalty of the gibbet or the cutting off of members, I took care that not a word about this was brought to me. It was he with his assessors who decided about such matters, since it was done without consulting me; of course I knew that it was I who gave him authority both to take up such cases and to decide them. But it gave me some confidence in ignoring the fact, that the holy men who were my predecessors in the see had followed this usage without being blamed for it. Nor will you anywhere in the Latin world find so many holy martyrs<sup>1</sup> and confessors as are associated with the greater of our two churches; as you will easily be able to make out from the Martyrology of the Venerable Bede the Presbyter or his continuator Oswald,<sup>2</sup>

<sup>1</sup> The archbishop's boast about the numbers of martyrs connected with the church of Lyons was not unreasonable. Some fifty Christians, including their bishop, St. Pothinus, were martyred at Lyons in 177 A.D.; in 202-8 some 19,000 Christians were reported to have perished here and hereabout at the hands of the heathen, St. Irenæus being one of them, according to the tradition.

<sup>2</sup> Bede's *Martyrologium* is usually printed *cum auctario Flori et aliorum*; Oswaldus or Usuardus (Husward) was not so much a continuator as author of a new *Martyrologium*, based on Beda-Florus and others, which became the martyrology of the Middle Ages. It was by command of Charles the Bald that in 858 *Usuardus sacerdos et monachus*, a Benedictine of St. Germain-des-Près,



who extended the catalogue to a great extent. It helped to give me the greater confidence that the prefect of the city of Rome, who specially supervises the punishment of crime, is said to receive the authority of his prefectship from our lord the Pope. And so it is that on the Sunday when *Lætare Jerusalem*<sup>1</sup> is chanted, after the completion of the solemn procession in which the supreme Pontiff carries round the Golden Rose, he rewards the prefect with the Rose for the performance of his duty. Nay, even, as is perfectly well known, in the city of Beneventum,<sup>2</sup> which peculiarly pertains to the mensal estate of the Holy See, it is our lord the Pope who appoints the rector; and it is the rector who, either directly or at least by help of citizens of that city, punishes and purges the crimes of the place. Such encouragements, you see, I was able to quote: at the same time I knew that whatever revenue was derived from causes of the kind referred to were carried to my account, after deducting the perquisites of my seneschal, who was entitled to a third of the proceeds for his trouble. But note that both we and our predecessors were very particular to see to it that he who was appointed to superintend duties of that kind was not subsequently promoted to holy orders. Alas! my good brother, we have replied to your first question, by explaining not what ought to be done, but what we in fact did;

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undertook this work, of which two versions had appeared before his death in 875. See vol. xii. (1901) of the new edition of Wetzer and Welte's *Kirchenlexikon*.

<sup>1</sup> The Fourth Sunday in Lent is called Lætare Sunday from the first word in the antiphon of the introit 'Rejoice, O Jerusalem.' On that Sunday a rose made of gold is blessed with much solemnity by the Pope in person, anointed with balsam, fumigated with incense and sprinkled with musk; and is usually thereafter presented to some Catholic prince whom the Pope desires to honour. Pope Alexander III. (1159-81) is known twice at least to have presented the Golden Rose. The consecration is usually said (Martène, Du Cange) to have become an annual ceremony only in the pontificate of Innocent IV. (1243-54); but this letter seems to treat it as an annual institution—if not perhaps on the modern footing—some time before 1200. Lætare Sunday is also called Mid-Lent and Refreshment Sunday.

<sup>2</sup> Beneventum, made a separate duchy by the Lombards in the sixth century, became dependent on the emperors, but was given to Pope Leo IX. in 1047 by the Emperor Henry III. And a papal possession it remained, with short intervals, till 1806.

not, as we admit, without some little scruple of conscience in your regard.

Next we proceed to answer your second inquiry. Clerics, and especially such as have been advanced to holy orders, must be strictly prohibited from prosecuting in a secular court robbery or theft committed at their expense; or if they absolutely cannot be kept from so doing, then let them on no account venture to proceed to single combat, or the ordeal of red-hot iron, or of water, or any procedure of that sort; and if they do not accommodate themselves to this rule, and if by a challenge of the kind specified, the loss of a man's members or homicide take place, then they will deserve to be deprived of office and benefice in the church. For to such is to be referred the authority of the apostle when he says: 'Why do ye not rather suffer the fraud yourselves?'<sup>1</sup> For indeed we hold that the injury inflicted on any one by the fraud or ill-will of another is here called fraud. All this we have set down for you with a good deal of hesitation and without prejudice to possibly better and sounder counsel that may be given you.

On account of the above-mentioned causes, and several others which were very strongly borne in on me, I decided, reverend priest of Christ, to offer in penitence and tears the little remainder of life which is granted to me by God, my Maker, and, if it may be, to have a foretaste of the joys of the contemplative life. For so long as I exercised the office of Archbishop of Lyons, it was inevitable that I should be involved in responsibility for secular warfare: constrained to pursue with the armed hand robbers and church-breakers and those infringing the peace of the highways, and to besiege, set on fire, and demolish their strongholds and castles; in the accomplishment whereof the deaths from time to time occurred, not merely of the malefactors themselves, but of those of whom we were in command. Wherefore now, throwing myself at the feet of your sanctity as a miserable sinner, I humbly beseech you to honour me by interceding for the pardon of my transgressions. Farewell.

<sup>1</sup> 1 Cor. vi. 7. *Fraudem pati* of the Vulgate allows a more direct play on fraud than the English version.

XXXI. Bull against duelling on the part of religious.<sup>1</sup>

Innocent, bishop, servant of the servants of God, to all the faithful of Christ throughout the province of York and the kingdom of Scotland, greeting. Know that it has come to our ears that a certain baneful custom—which should rather be called an abomination, as being utterly in defiance of law and of the credit of the church—has from of old established itself within the kingdom of England and of Scotland,<sup>2</sup> and is still wrongfully adhered to, namely, that if a bishop, abbot, or any cleric happen to be challenged for any of the grounds of offence in respect of which a duel is wont to take place amongst laymen, he who is challenged, however much a cleric he may be, is compelled on this score personally to undergo the ordeal of duel: We therefore, utterly detesting the above-named custom as offensive to God and the sacred canons, very straitly command by authority of these presents under pain of anathema that no one henceforward shall in any way presume to undertake the like. Accordingly let no person whatever infringe this our letter of inhibition or with reckless audacity contravene the same. And if any one shall presume to do so, let him know that he will incur the wrath of God Almighty and of the blessed Peter and Paul, his apostles. Given at the Lateran on the twenty-first day of April, in the nineteenth year of our pontificate.

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<sup>1</sup> This bull of Innocent III. was drawn up fifteen and a half years (Dr. Robertson, unusually vague, says 'a few years,' Preface, p. cciv) after Malvoisin's consecration, and was issued within three months of Innocent's death. It is dated 'in the nineteenth year of our pontificate.' Innocent, elected Pope in January 1198, completed the eighteenth year of his popedom in the beginning of 1216, and died on the 16th or 17th July of that year. Malvoisin, who as Bishop of St. Andrews went to the œcumenical council at Rome in 1215, did not return till 1218. This bull did not put an end to the unseemly usage: at the time of the Legatine Council of London under Otho (1237) the bishops and clergy of England petitioned the Legate to persuade the kings of England and Scotland to free them from liability to wager of battle.

<sup>2</sup> *Inter regnum Angliæ et Scociæ.*

XXXII., XXXIII. [The next item is a list of a hundred and forty churches dedicated by Bishop David Bernham or de Bernhame of St. Andrews (1239-1243; see pp. 57-67) with the dates of their consecration in order of date—a list which, as it hardly requires translation in any case, and has no immediate connection with the *Statuta* is here simply noted.

So with the two churches consecrated by Bishop William Wishart (1273-1279).]

XXXIV. [The same holds good for the lists printed by Dr. Robertson in vol. i. pp. ccciv-cccvi—a fragment of Boiamund's or Bagimont's Roll, the valuations of all the benefices of Scotland by the legate of the Roman pontiff, Boiamund de Vicci, commissioned in 1275.]

XXXV. Letter of the King on behalf of the church of Candida Casa.<sup>1</sup>

James, by the grace of God, King of Scots, to all to whose knowledge, whether at present or in future, the present letters shall come, greeting. Inasmuch as the church of Candida Casa and the prelates and ministers of that church, according to their sad complaint often set forth before us, is aggrieved and injured<sup>2</sup> in a manner no other churches or prelates of our kingdom have been in respect of the rights granted to the whole order of clerics: we make it known that we, desiring that the said church, its prelates and ministers, churches, men, tenants and servants, lands, revenues, and possessions, and any other privileges shall be

<sup>1</sup> The church of Whithorn or Candida Casa, forming the diocese of Galloway, was, though undoubtedly in the kingdom of Scotland, as undoubtedly within the ecclesiastical province of York until St. Andrews became in 1472 an Archbishopric, and Galloway was made subject to it. In 1491 Galloway was declared a suffragan see of Glasgow. So long as the diocese was politically in one country and ecclesiastically subject to a prelate in another, it would be almost inevitable, especially in case of hostilities between the two countries, that the clergy of that diocese should suffer as step-children. The present grant was made by James I. six years after his return from his long captivity in England.

<sup>2</sup> The verb is singular: *sit gravata atque lesa*.

governed, treated, and ruled like the other prelates of our kingdom and their benefices and privileges; since it is a poor part which does not correspond with its whole: We command, and by tenor of these presents, straitly enjoin all and sundry our subjects, officers and servants that henceforth they treat and rule the said church of Candida Casa, bishop, abbots, priors and other ministers of the church whatsoever in Galloway, its men, tenants and servants, lands, revenues, possessions and all its privileges as the other prelates, bishops, and abbots, and other ministers of churches and their goods, men, and tenants, servants, revenues, possessions, and privileges throughout our whole realm are treated and ruled, without any servitude, oppression or grievance whatsoever; so that the clergy everywhere throughout our kingdom shall henceforward enjoy and use, without disparity or difference, one right and one privilege and the liberty granted generally to the whole order of the clergy. In testimony of all and sundry whereof we have caused to make patent under our great seal these our letters, to remain for ever with the church of Candida Casa. At Edinburgh, the twenty-sixth day of the month of August, in the year of the Lord one thousand four hundred and thirty, and of our reign the twenty-fifth.

XXXVI. Grant of the Collegiate Chapel Royal by the  
King by full royal right.

James, by grace of God, King of Scots, to all good men, his clergy and laity, to whom the present letters shall come, greeting. Know that we have granted, conferred, and bestowed, as by the tenor of these presents we grant, confer, and bestow, of full royal right, on our beloved servant our clerk Dominus J. K., the provost of the Collegiate church, our royal chapel, of St. Mary of the Rock at St. Andrews, now lately become vacant by the death of umquhile Magister J. A.,<sup>1</sup> in his life-

<sup>1</sup> The death of Magister J. A. enabled Dr. Robertson to refer this grant to the year 1496, when Provost James Allardyce died, or soon thereafter. His successor was James Kincragy. By this perpetual iteration of his 'royal right' to make such investiture, James IV. seems to flaunt this exceptional and



time provost and possessor of the same; *or if it has become vacant by resignation, let it be put thus*: now lately become vacant by the unconditional and simple resignation of our beloved Magister J. G., last provost of the same, voluntarily made into our hands and by us accepted by royal right; [an appointment] pertaining by full royal right to our provision, disposition and donation in all respects, as often as it shall happen that the same becomes vacant. And him, personally in our presence for the purpose, we put in corporal possession (as it were),<sup>1</sup> of the said provostry, its rights and pertinents, and of royal right invest with the same by putting our ring on his finger; the said provostry to be held and had and governed by the said Dominus J. K. for the whole time of his life: with all and sundry its lands, churches, fruits, returns, proceeds, rights, tithes, leases, and emoluments; its houses, buildings, liberties, immunities, privileges, exemptions, perquisites, honours and dignities.

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uncanonical privilege in the face of the world.' For in the long controversy of the Middle Ages about investitures the church had, especially through Gregory VII. and his successors, successfully contended against lay investiture by ring and staff, not merely to ecclesiastical offices but to the temporalities therewith associated. James seems to rejoice in his 'royal right' to institute, with his own ring, to a distinctly spiritual office with its rights and pertinents, all mention of the ordinary of the diocese, the Archbishop of St. Andrews, being omitted. See Dr. Robertson's Preface, vol. i. pp. ccxxiv-ccxxvi.

<sup>1</sup> *Seu quasi*; i.e. symbolically. See Du Cange on *quasi*.

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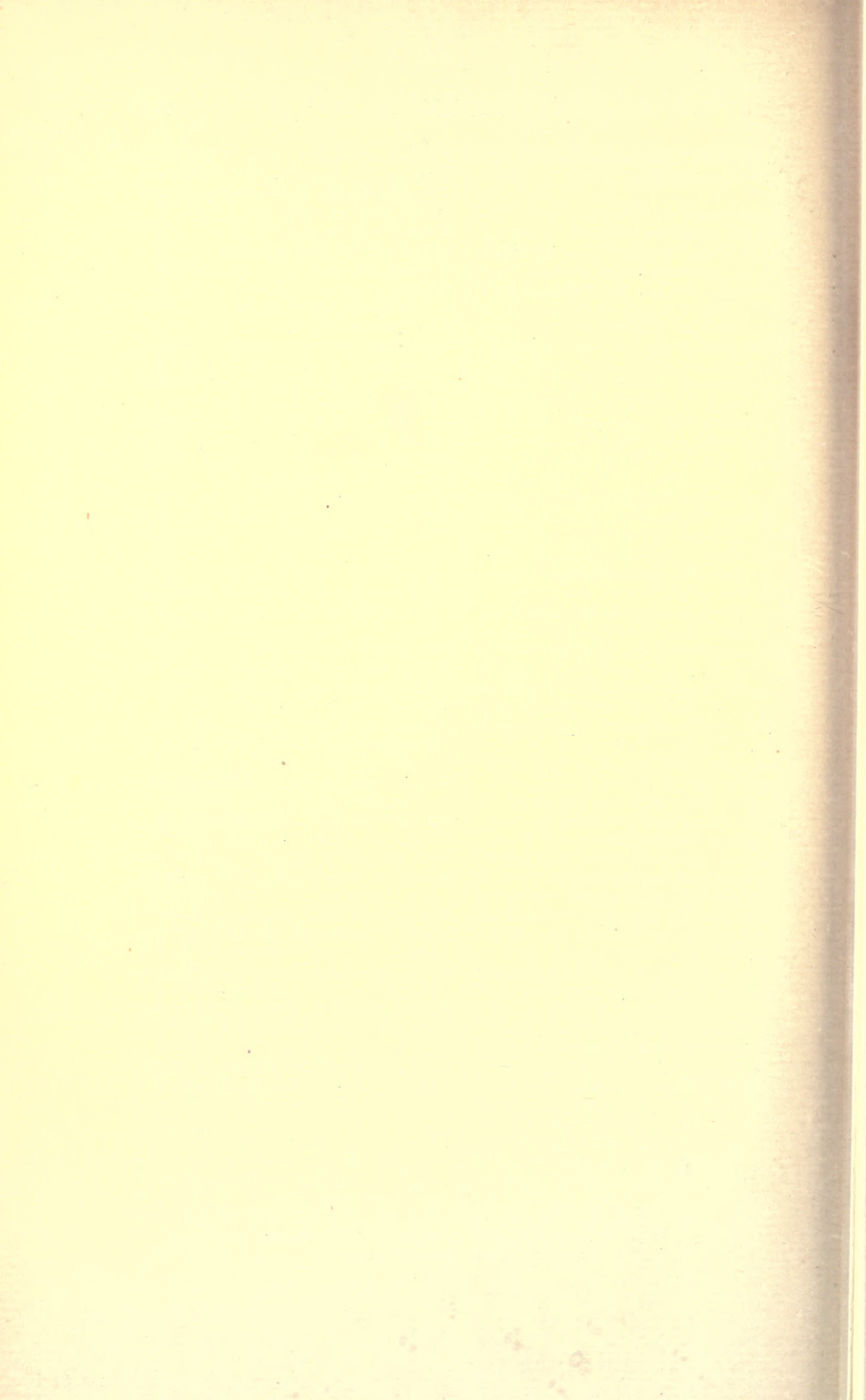
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## REPORT OF THE TWENTIETH ANNUAL MEETING OF THE SCOTTISH HISTORY SOCIETY

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THE TWENTIETH ANNUAL MEETING OF THE SOCIETY was held in Dowell's Rooms, Edinburgh, on the 17th of November 1906, —The Right Hon. the EARL OF ROSEBERY presiding.

The SECRETARY read the Report of the Council as follows:—

Since the last ANNUAL MEETING OF THE SOCIETY, three volumes have been issued to the Members, viz.:—

1. The second volume of *The Records of the Justiciary Court, Edinburgh*.
2. *Records of the Baron Court of Stitchill*.
3. The first volume of *Macfarlane's Geographical Collections relating to Scotland*.

These volumes were due for the financial year ending on the 7th of November 1905.

For the year which has just closed three volumes were again promised. As to these:—

1. The whole of the text of the second volume of *Macfarlane's Geographical Collections* has been in type for some time; a considerable portion of it has been printed off; a large part has been finally revised, and the Editor's Introduction is in proof. This volume has been delayed by Sir Arthur Mitchell's anxiety to make it as perfect as possible, and by the translation of the long Latin passages which occur in it.

2. The third volume of *Macfarlane's Geographical Collections* is in the hands of the printers, who are now setting it up.

3. The whole of the translation of the *Statuta Ecclesie Scoticanæ* is in type, and more than half of it has been revised. The translation of all the documents appended to the *Statuta* is likewise in type, and so, too, is part of the translation of the documents appended by Dr. Joseph Robertson to his preface. The first part of Dr. Patrick's valuable Introduction is also in type. The Council on further consideration think it unnecessary to reprint the Latin text.

These three volumes are being pushed on towards completion as rapidly as is consistent with a due regard to scholarly excellence and accuracy.

For the incoming year the Council propose to issue three volumes. They will be taken from the following:—

1. *The Charters of Inchaffray*.—These were briefly described in the last Annual Report. The text of the charters, bulls, and other writs is now in type. The Society is indebted to Dr. Maitland Thomson for much labour expended towards securing the accuracy of the printed text. The English abstracts are ready for the printers. The twenty-eight facsimiles of the more interesting documents will add much to the value of the book, as will also a map prepared by Dr. Maitland Thomson, showing the lands which belonged to the monastery. That part of the Preface which relates to ecclesiastical matters, and the notes on ecclesiastical persons named in the charters, are ready to be sent to the printer. That part which relates to the Earls of Strathern and other secular persons is not so far advanced. Mr. W. A. Lindsay, K.C., Windsor Herald, and Bishop Dowden are editing this volume.

2. *The Ochertyre House-Book of Accounts*.—This record, which has been kindly lent by Sir Patrick Keith Murray, has



now been transcribed. It covers the period between January 1737 and February 1739, and the entries throw light on the way in which a county family lived in those days, the variety and cost of the viands, etc. In the hands of such an editor as Dr. James Colville, this volume should prove both interesting and instructive. He has made considerable progress in the preparation of his Introduction.

3. *A Selection of the Forfeited Estates Papers*.—This volume, which is to be edited by Mr. A. H. Millar, Dundee, will form a valuable supplement to the history of the Rebellion.

4. *Records of the Commissions of the General Assemblies, 1650-1653*.—This volume, to be edited by the Rev. James Christie, D.D., completes the series of which two volumes have already been issued.

During the past year the Society has lost nine members by death and six by resignation. There is special cause to regret the loss of the late Canon Murdoch, who, as an editor and as a member of Council, rendered valuable services to the Society. After the vacancies are all filled up, thirty-eight names remain on the list of applicants for membership.

The three members of Council who fall to retire at this time are Dr. Flint, Dr. Hume Brown, and Bishop Dowden. It is recommended that Bishop Dowden be re-elected, and that Mr. Fitzroy Bell and Mr. G. M. Paul be elected as the new members of Council, and that Dr. Hume Brown be appointed to fill the vacancy caused by the death of Canon Murdoch.

The accompanying vidimus of the Hon. Treasurer's accounts shows that the balance in favour of the Society on the 28th of October 1905 was £530, 10s. 5d., that the income for the year 1905-1906 was £522, 4s. 3d., and the expenditure £434, 8s. 9d., leaving a balance of £618, 5s. 11d. in favour of the Society.



LORD ROSEBERRY, in moving the adoption of the report, said:—Ladies and Gentlemen, I rise to move the adoption of this report, and in the first place I have to make an apology for being late. I think you will excuse me when you know that my lateness was caused by deliberations with regard to the retention of the ‘Auld Brig’ of Ayr, which I think is a matter eminently within the purview of the Society. But at the same time I would humbly represent to the Council that two is not the most convenient hour of meeting, in particular for those who are called country members. The mid-day meal is said by doctors to be the most important of the day, and it is quite impossible to reconcile the claims of the Scottish History Society with the claims of the internal economy of nature. I would humbly represent that they take into their careful consideration whether we do not meet at noon or three o’clock as being more convenient, if not for the urban, at least for the suburban members of the Society.

I proceed to the more immediate discussion of the matters in the Report. The Report is one and the only Report I am acquainted with that is always satisfactory, and that in itself places the Society on a different basis from most others. I desire to associate myself with the regret expressed for the loss of Canon Murdoch, who rendered such valuable services to the Association. I am surprised to see that six members have left the Society by resignation. When it is considered what are the privileges of the Society, what advantages are offered by the Society, and the number of people who are anxious to enter the Society, I think the cases of these six resignations should be carefully investigated by the Council. If it is due to any dissatisfaction with the general course of our publications these resignations are worth noting, and in any case I should like to know why it is that those people have voluntarily abandoned privileges so valuable.

And now we come to the publications of the year. Of course, even in the exalted office that I hold in the Society, I am not so much behind the scenes as to know all that is contained in those volumes; and, even if I had the privilege to know, I should not have been able to investigate their contents before the meeting of the Society. But I have been allowed to see the proofs of the two prefaces that are mentioned in the Report, the Preface of Sir Arthur Mitchell to *Macfarlane’s Geographical Collections*, and the Preface by Dr. Patrick to the *Statuta Ecclesiarum*.

*Scoticana*. I have not been able to read word for word these Prefaces, but I can assure the Society that they in themselves would make the volumes which they introduce most valuable portions of the library now in course of publication by the Society. The extraordinary minuteness and critical faculty and laboriousness of Sir Arthur Mitchell's Preface earn my admiration. When we come to think what his age is—though we can never remember it when we are with him—it seems to me little less than a miracle that he should have been able to give so much time, and so much labour, to elucidating the most minute points in connection with this collection. We owe him, I am sure, the deepest debt of gratitude for what he has done; and the same may be said of Dr. Patrick's Introduction. That is on a broader scale, and it gives a sketch of the early history of the Church in Scotland, which is, to me at any rate, largely novel and original, and which is, at any rate, whether you agree with his conclusions or not—and I am not sufficiently learned to differ from them or agree with them—whether you agree with his conclusions or not, you cannot fail to see that it is a sketch of the most absorbing interest to any one who is interested in the history of Scotland.

That is all I have to say about the publications of the present year. Now we come to the large question, which is always before the Council, and a subject of great interest to the Council, the general policy of the Society with regard to publications. There is, for example, the valuable volume on which we are going to spend a considerable sum, *The Charters of Inchaffray*. That in itself will be an addition of great importance to our series, and it is one of the many debts we owe to Bishop Dowden that he is undertaking, with Mr. Lindsay, the editing of this volume. But charters, though they are the raw material of history, are not by any means the sole, or indeed the direct purpose of our Society. I am glad that in the absence of any other society we should publish a volume of charters annually, or from time to time, so as to vindicate our claim as a serious Historical Society; but, as a well-known orator once said of the Liberal Unionists in connection with the Conservative party, I view the publication of the charters as rather a crutch than a prominent object of our being. The prominent object—and I ought to know it, for I had a great deal to do with the inception of the Society—was rather to throw light on the social history of Scotland, as, of course, charters do indirectly, and to furnish

volumes which should be readable of the people, that should be interesting to the ordinary reader, which cannot be said of all muniments. I am very strongly of opinion that while we do a certain amount for the serious student and for the learned student, which we do not all profess to be, we should not lose sight of the original object of our being, which is that of throwing light on the social history of Scotland, and of printing volumes readable of the vulgar, among whom I am glad to count myself. It is for that reason that I am specially pleased to see a volume coming out next year in the shape of *The Ochertyre House-Book of Accounts*, which is directly within our purview. The entries 'throw light on the way in which a county family lived in those days,' and so forth. That is exactly what we want to know, and the more publications we can have of that kind the better we shall fulfil the original aim of the Society. Then I come to the *Selection of the Forfeited Estates Papers*. That, I confess, is entirely within the limits of my own immediate hobbies, and therefore I mistrust any commendation that I may be inclined to give to it.

The other day I was talking to a very distinguished historian on the objects of our Society, which occupy my mind even in London, because the conversation took place in London, and he said: 'Don't you think you have done enough for the Jacobites of the eighteenth century?' 'Well,' I said, 'perhaps to the eye of reason we have; but to the eye of sympathy I don't think we can ever do enough for the Jacobites of the eighteenth century.' I hold the opinion, possibly erroneous, which I will not express in as crude a way as I have expressed it, that there is a strong underlying sympathy and interest with the Jacobites of the eighteenth century to be found somewhere in the nature of every Scotsman or Scotswoman; and, therefore, I am clearly of opinion, though I may be prejudiced, that in dealing with the Jacobites of the eighteenth century we are meeting a constant appetite and desire in the Scottish mind. And what is more, I would say this is a subject on which there is abundance still, I dare say, of manuscript literature to be found, and which, therefore, we should print while we can. Ink is fading every day; paper is not immortal; and, therefore, if only for the purpose of keeping permanent these interesting records, to which our hearts vibrate even to the present time, I do not think we should give up abruptly the publication of records dealing with the Jacobites of the

eighteenth century. I am glad to see that the applause with which you greet these remarks shows the Society are in sympathy with these views. Well, but don't let us, of course, overload our programme with the Jacobites of the eighteenth century, for, otherwise, we should infringe upon the province of the Society of the White Rose, or whatever it is called, and we might find ourselves in a conflict of monopolies, which would be extremely undesirable.

But the general policy of our Society is much larger than that simply of charters, or literature relating to the Jacobites of the eighteenth century. I am quite clear our original purpose—and our lamented friend Dr. Law, I am sure, would confirm me were he with us—was to throw light on the social history of Scotland. Whatever we may publish in the way of serious documents, we must never lose sight of the human note. I venture to hope that now, and long after I am gone from among you, the human note may be the key to all your publications. It is by the human note alone that you can keep up the interest of your members and the anxiety to become your subscribers. Now, I know this subject occupies the Council very much, because I have heard of it from individual members, though I have not been able to attend their meetings at all during the past year.

And I venture to make two suggestions, neither of which may be practical, but all suggestions are worth considering when you wish to do your best for the Society. They are these. In the first place, I think we ought to try and elicit some further documents with regard to the history of the Highlands during that obscure time up to the Rebellion of 1745, when they had a history so distinctly their own. Almost all the subjects connected with the history of Scotland are being freely elucidated, but there always seems to me, and I dare say there is, even with people like Mr. Hume Brown, who is so much better informed than myself—there always seems to me to be a most interesting veil of darkness over the Highlands up to the time of that Rebellion. Where Sir Walter Scott found his materials on which he based his immortal sketches, his immortal representations of life in the Highlands anterior to and of that time, I do not know—I suppose it must have been largely from oral traditions—but I think that everybody here must feel, however erudite they may be, that there is a singular darkness as regards that strange history of the Highland prehistoric times.

North of the Firth of Forth you had Clans living like, or almost like, the tribes that we find in Africa, conducting their affairs almost without reference to central government, having their petty warfares, their pitched battles, their districts bounded not by parchment so much as by immemorial tradition, and the jealousy of the tribes inhabiting them. You have a condition of things, immediately neighbouring civilisation of a more advanced type, which was almost barbarous in many respects in its character. Surely investigation of such a state of things as that is worthy of the attention of our Society at any rate.

While so much has been elucidated in connection with the history of Scotland, that most deeply important part of it does not seem to be made clear, at any rate to my mind. Those genealogical and geographical collections of Macfarlane, three volumes of which have been published, and another of which is in course of publication, do throw much interesting light on this very point, and therefore I welcome their publication with both hands; but I cannot help thinking that in the muniment rooms of the great Highland lords and lairds there must be documents, living documents, human documents, rude though they may be, that bear on the history of these times, and that these magnates would not be unwilling to intrust to our care.

They should remember that while they confer a benefit on us, we also preserve for all time to come those records that they lend to us, in a shape accessible and available, and, so far as any books can be, permanent. I would make an appeal to great noblemen like the Duke of Sutherland and the Marquis of Breadalbane, who have great charter-chests at their disposal and great masses of family papers, and heads of great clans like Cluny and MacLeod, whether they cannot find anything they may think worthy of preservation by us which would throw light on this strange history to which I have alluded. We, of course, compete in a certain sense with the national Historical Manuscripts Commission, but in another sense we do not. I am a member of that Commission, but I think the two operations need not at all cross each other, but may run perfectly parallel. The work of the Historical Manuscripts Commission is largely, if not almost entirely, the publication of letters. We would hand over the province of letters altogether. They would leave us, on the other hand, what is so precious to us, journals and account-books and those little family records which are not really within the purview of the



Historical Manuscripts Commission. The work that they have to overtake is so enormous that they should welcome the co-operation of a society more leisurely and less ambitious than they are.

But now I have another suggestion to make with regard to our publications which I think worthy the attention of the Council. You know that, in the eighteenth century, Edinburgh, and, to a lesser degree, perhaps, Glasgow, was the home, the centre, of social clubs. They swarmed in Edinburgh; no one can read the history of these times in Edinburgh without recalling the various kinds of clubs, convivial for the most part, which abounded in Edinburgh at that time, and which perhaps we are too much deficient in now. These clubs have gone, and I suppose the state of society which furnished the recruiting-ground has largely vanished too. But somewhere or other, unless they have been burned in a moment of conviviality, the records of these clubs should be extant, and in existence, and I ask the Council if they will not make some effort to recover these records, and see if we could not print some of them, as valuable indications of the social life of Edinburgh in the past, and to some extent also of Glasgow. I think also, even in our country towns, there were clubs of this kind, for in those days they were the rallying-points of the society of their districts. But if these could be recovered—and I think they must be dormant in some private custody—it would be extremely worth while for the Council to see if they were not worth recovering and printing.

I am finished with my two practical suggestions, and I will only, in conclusion, say that this Society, I think, presents advantages to the subscribers which are not offered by either of the two competing parties in the great literary civil war which is devastating London. I do not wish to draw on my head columns of the angry correspondence which fills so large a portion of the columns of the *Times*; but I think in a quiet humdrum way we derive more enjoyment from our co-partnership in this association, we derive even—I should say, under correction and without prejudice, as we put it, and without fear of the law of libel—more tangible advantages by the membership of this association than is offered by either of the parties in the sanguinary conflict to which I have alluded. That being so, I move the adoption of the Report, with the full belief that this Society, conducted as it is, and with the new and valuable assistance of the Secretary, Dr. Hay Fleming, will long continue to flourish.

SHERIFF GUTHRIE, in seconding, said the Society had shown a remarkably catholic spirit in the scope of its publications. They had shown no disposition to confine their operations to any period, and, equally, they had shown that they were not disposed to confine their operations to the ecclesiastical, the legal, the military, the historical, the social, the biographical, or to the topographical sides of Scottish history, because they had publications which ranged themselves under all those heads. He suggested that they might have in some largely circulated publication a review of the publications of the Society since 1897, when the last review appeared. It would make a very interesting article, and would inform many people of what the Society were doing who were at present ignorant of their operations.

The Report was unanimously adopted.

Mr. P. W. CAMPBELL moved a vote of thanks to Lord Rosebery. He remarked that he believed a good deal of information could be obtained from some of the older law offices in Edinburgh, if some antiquary could be set to browse amongst the old papers there.

Mr. W. B. BLAIKIE, in seconding, remarked that Edinburgh was to be congratulated upon having, on consecutive days, had three such speeches delivered in it as had been made by Lord Rosebery. His Lordship the previous day, in a fit of unnecessary modesty, had proclaimed to the world that he had no influence, but he (Mr. Blaikie) was perfectly certain there was no man on this side of the Tweed whose views would reach further.

LORD ROSEBERY, in reply, said—I am much obliged to the gentlemen who moved and seconded this vote of thanks. Something with regard to what Mr. Blaikie said seems to call for notice. He said I denied that I had any influence yesterday; but yesterday my reference was to influence at Downing Street, which is a very different matter. I would beg to make that cardinal correction on my speech if it has been misreported.

Mr. J. PATTEN MACDOUGALL, C.B., moved a vote of thanks to the Council. As a member of one of them, he said, he knew that those clan societies were themselves extremely anxious to produce what they had for their own clan histories but for two difficulties—they had not the money, and individual members had not the time. He felt sure that if the Council of this Society would put themselves in communication with those clan societies the bridge might be made, which might, to some extent, meet the difficulty, and that the results might not be unfavourable.

LORD ROSEBERY.—After what Mr. Patten MacDougall has said, I think the Council will have no difficulty in appointing him plenipotentiary in dealing with the clan societies.

Dr. JAMES COLVILLE seconded the motion, which was agreed to, and the proceedings terminated.

# ABSTRACT OF THE HON. TREASURER'S ACCOUNTS.

*For the Year ending 7th November 1906.*

## I. CHARGE.

### I. Balance from previous year—

(1) On Deposit Receipt, . . .	£500	0	0	
(2) On Current Account, . . .	24	4	5	
(3) In hands of Treasurer, . . .	6	6	0	
				£530 10 5

### II. Subscriptions, viz.—

(1) 400 Subscriptions for				
1905-1906, . . .	£420	0	0	
8 in arrear for 1904-1905				
paid, . . .	8	8	0	
1 in advance for 1906-				
1907 and 1907-1908 do.	2	2	0	
				£430 10 0

Less 8 in arrear for 1905-

1906, . . .	8	8	0	
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422 2 0

(2) 81 Libraries, . . .	£85	1	0	
1 in arrear for 1904-1905, . . .	1	1	0	
	£86	2	0	

Less 1 in arrear and 5 in

advance for 1905-1906, . . .	6	6	0	
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79 16 0

III. Copies of previous issues sold to New Members, . . . 2 2 0

IV. Interest on Deposit Receipts, . . . 18 4 3

Sum of Charge, . . . £1052 14 8



## II. DISCHARGE.

I. *Incidental Expenses*—

(1) Printing Cards, Circulars, and Reports, . . . .	£13	9	0
(2) Stationery, Receipt and Cheque Books, . . . .	3	4	10
(3) Making-up and delivering Publications, . . . .	27	17	11
(4) Postages and Incidental Expenses of Secretary and Treasurer, . . . .	4	7	1
(5) Clerical Work and Charges on Cheques, . . . .	5	1	9
(6) Hire of room for Annual Meeting, . . . .	1	1	0
	<hr/>		
		£55	1 7

II. *Justiciary Records, Vol. ii.*—

Composition, Printing, and Paper, £78	1	0
Proofs and Corrections, . . . .	27	13 0
Back-lettering, . . . .	0	6 0
Binding, . . . .	18	0 8
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	£124	0 8
Less paid to account, October 1905, . . . .	106	18 0
	<hr/>	
		17 2 8

III. *Minutes of the Baron Court of Stitchill*—

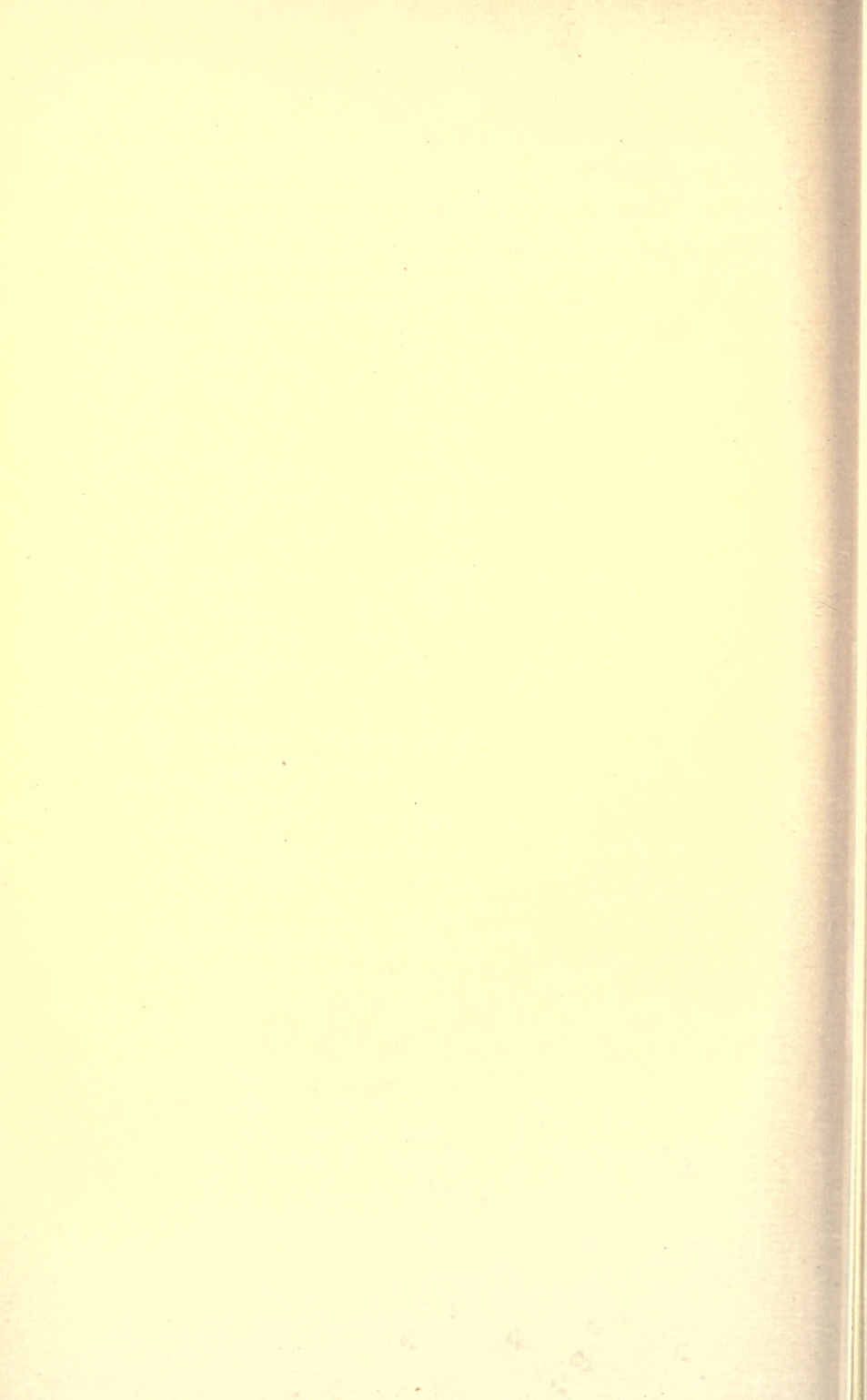
Composition, Printing, and Paper, £60	1	0
Proofs and Corrections, . . . .	24	9 0
Back-lettering, . . . .	0	12 6
Binding, . . . .	17	6 8
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	£102	9 2
Less paid to account October 1905, . . . .	84	10 0
	<hr/>	
		17 19 2
	<hr/>	
Carry forward, . . . .	£90	3 5



Brought forward, . . . . .	£90	3	5
IV. <i>Macfarlane's Geographical Collections</i> , Vol. i.—			
Composition, Printing, and Paper, £101	8	0	
Proofs and Corrections, . . . . .	38	6	0
Engraving Diagram and Print-			
ing Map, . . . . .	5	5	0
Back-lettering, . . . . .	0	6	0
Collating, . . . . .	4	0	0
Binding, . . . . .	18	3	4
	<hr/>		
	£167	8	4
Less paid to account in October			
1904 and 1905, . . . . .	77	16	0
	<hr/>		
		89	12 4
V. <i>Macfarlane's Geographical Collections</i> , Vol. ii.—			
Composition, Paper, and Print-			
ing to date, . . . . .	£92	14	0
Corrections and Proofs, . . . . .	35	14	0
	<hr/>		
		128	8 0
VI. <i>Charters of Inchaffray Abbey</i> —			
Composition to date, . . . . .	£17	15	0
Corrections, . . . . .	7	4	0
Reproduction of Charters in			
facsimile, . . . . .	60	0	0
Transcribing, . . . . .	11	14	0
	<hr/>		
		96	13 0
VII. <i>Statuta Ecclesiae Scoticanæ</i> , 1225-1559—			
Composition to date, . . . . .	£25	18	0
Corrections, . . . . .	3	14	0
	<hr/>		
		29	12 0
VIII. <i>Balance to next account</i> —			
(1) On Deposit Receipt, . . . . .	£600	0	0
(2) On Current Account, . . . . .	17	4	11
(3) In hands of Treasurer, . . . . .	1	1	0
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		618	5 11
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Sum of Discharge, . . . . .	£1052	14	8

EDINBURGH, 13<sup>th</sup> December 1906.—Having examined the Accounts of the Honorary Treasurer of the Scottish History Society for the year ending 7th November 1906, of which the foregoing is an Abstract, we find the said Accounts to be correctly stated and sufficiently vouched, the balance in Bank at the end of the year being £617, 4s. 11d., of which £600 is on Deposit Receipt and £17, 4s. 11d. on Current Account, with £1, 1s. in hands of Treasurer.

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# Scottish History Society



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 Patrick, David, LL.D., 339 High Street, Edinburgh.  
 Patrick, N. J. Kennedy Cochran, Advocate, 34 Heriot Row,  
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 Prentice, A. R., Newark Lodge, 28 Newark Street, Greenock.  
 Pullar, Sir Robert, Tayside, Perth.
- RAINY, A. ROLLAND, M.B., C.M., M.P., 29 Lower Seymour  
 Street, Portman Square, London, W.
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 Ramsay, Miss E. Lucy, Cairnmore, Port-Ellen, Isle of Islay.  
 Ramsay, William, 32 Frederick Street, Edinburgh.

- Rankin, W. B., W.S., 9 Lansdowne Crescent, Edinburgh.  
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 Reid, J. A. Paton, K.C., 11 Royal Circus, Edinburgh.  
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 320 Richardson, Ralph, W.S., Commissary Office, 2 Parliament Square, Edinburgh.  
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 Robertson, A. Ireland, Brae Park, Cramond Bridge, Midlothian.  
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 Scott, Rev. Archibald, D.D., 16 Rothesay Place, Edinburgh.  
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 Shaw, David, W.S., 1 Thistle Court, Edinburgh.  
 Shaw, Right Hon. Thomas, M.P., K.C., Lord Advocate, 17 Abercromby Place, Edinburgh.  
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 Smith, John Lamb, S.S.C., 58 Polwarth Terrace, Edinburgh.  
 Smith, Prof. G. Gregory, M.A., 26 Windsor Park, Belfast.  
 Smith, J. K., 4 East Hermitage Place, Leith.



- Smith, Rev. R. Nimmo, LL.D., 5 St. Bernard's Crescent,  
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- Sturrock, Rev. J., 3 Mansionhouse Road, Edinburgh.
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- Thomson, Col., St. James's Club, Piccadilly, London, S.W.
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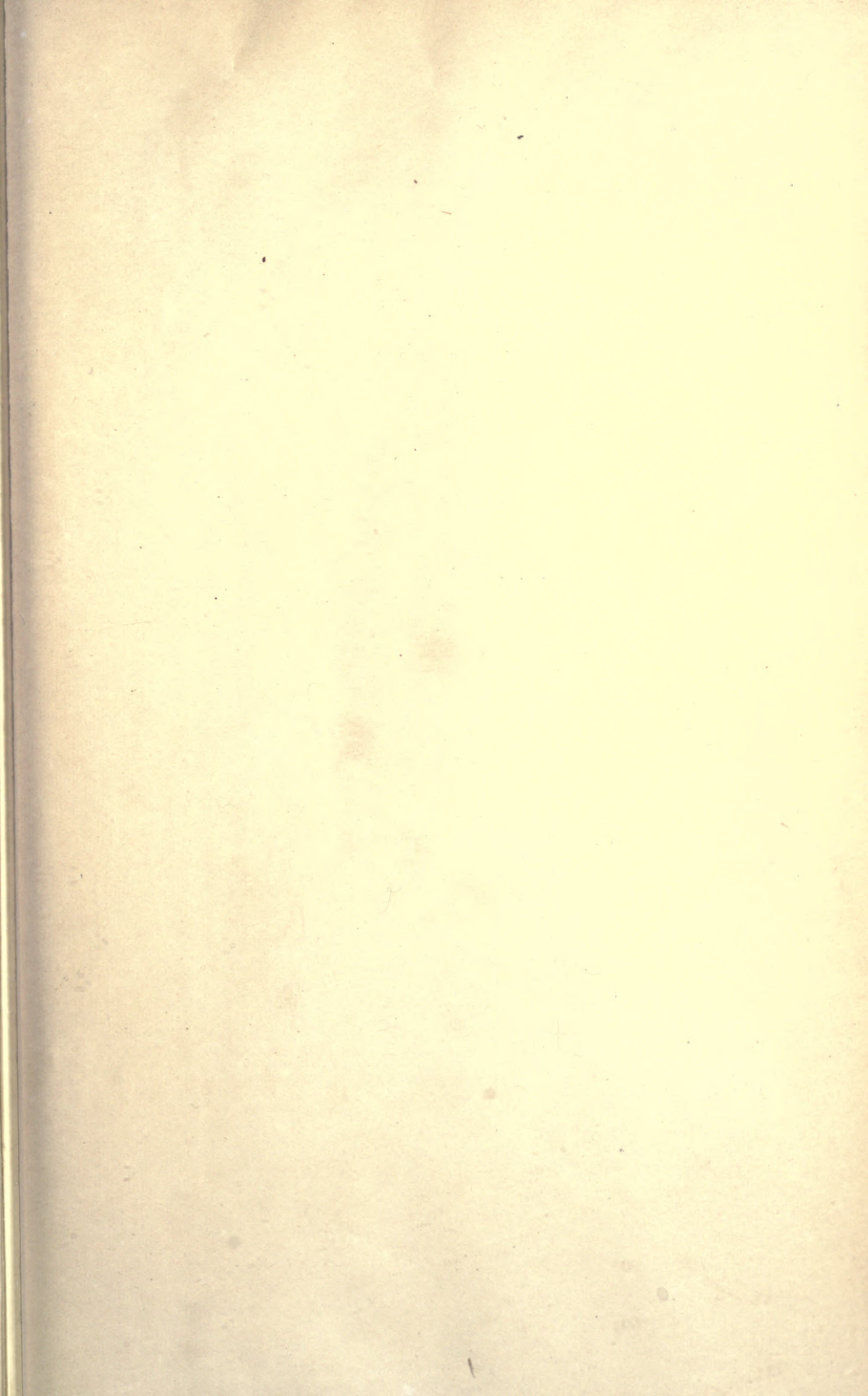
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